Google

This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at http://books.google.com/

HF
5621
.L77

ENCYCLOPÆDIA OF ACCOUNTING

Printed by R. & R. CLARK, LIMITED
FOR
WILLIAM GREEN & SONS
January 1908

ENCYCLOPÆDIA

OF

ACCOUNTING

EDITED BY

GEORGE LISLE, C.A., F.F.A.

VOLUME I

"A" LIST TO BUYING IN

EDINBURGH
WILLIAM GREEN & SONS
PUBLISHERS
1903

THE AUTHORS OF THE PRINCIPAL ARTICLES IN THIS VOLUME ARE AS FOLLOWS:—

Account Current.—HERBERT L. TEBBS, Barrister-at-Law.

Accountant.—RICHARD BROWN, C.A., Secretary of the Society of Accountants of Scotland.

Accountants (Abroad).—TH. LIMPERG, Jr., Accountant, of the firms of Volmer & Co. and Schlimmer & Co., Amsterdam.

Accounting in its relation to Economics.—VICTOR V. BRANFORD, M.A., Fellow of the Royal Statistical Society.

Actuary.—JOHN R. ARMSTRONG, F.F.A.

Agency.—JOHN R. M'ILRAITH, M.A., LL.B., Barrister-at-Law.

Annuities.—W. A. ROBERTSON, F.F.A.

Apportionment.—HERBERT L. TEBBS, Barrister-at-Law.

Arbitration.—JOHN R. M'ILRAITH, M.A., LL.B., Barrister-at-Law.

Arithmetic.—GEORGE LISLE, C.A., F.F.A., Author of "Accounting in Theory and Practice," "Book-keeping for County Councils," etc.

Assessment Roll.—JOHN T. MAXWELL, Head of Statistical, Audit, and Accounting Branch of Scottish Local Government Board.

Assessor.—ALEXANDER LYNCH, Lands Valuation Assessor for the County of Midlothian.

Assignation.—RICHARD BROWN, Professor of Mercantile Law, St. Mungo's College, Glasgow.

Auction and Auctioneer.—JOHN R. M'ILRAITH, M.A., LL.B., Barrister-at-Law.

Auctioneers' Accounts.
Auditing.
} LAWRENCE R. DICKSEE, F.C.A., Professor of Accounting in the University of Birmingham; Author of "Auditing," "Book-keeping for Accountant Students," etc.

Averages.—ARTHUR L. BOWLEY, M.A., Member of the Council of the Royal Statistical Society; Author of "Elements of Statistics."

Balance Sheets.—GEORGE LISLE, C.A., F.F.A., Author of "Accounting in Theory and Practice," "Book-keeping for County Councils," etc.

Bank Accounts.
Bank Notes.
} WILLIAM WALLACE, M.A., LL.B., Advocate, Author of "Banking Law."

Bankers' Books Evidence Act.
Bankers' Lien.
} ALLAN M'NEIL, Solicitor, Bank of Scotland.

Banking.—ERNEST SYKES, B.A. (Oxon.), Certificated Associate of the Institute of Bankers.

Bankruptcy (England).—SIDNEY S. DAWSON, A.C.A., Author of "A Lexicon for Trustees and Liquidators," "The Accountant's Compendium," etc., Liverpool.

Bankruptcy (Scotland).—W. J. CULLEN, M.A., LL.B., Advocate, Editor of "Goudy on Bankruptcy."

Bills of Exchange.—WILLIAM WALLACE, Author of "Banking Law."

Bond for Cash Credit.—ALLAN M'NEIL, Solicitor, Bank of Scotland.

Book-keeping.—GEORGE LISLE, C.A., F.F.A., Author of "Accounting in Theory and Practice," "Book-keeping for County Councils," etc.

Book-keeping, its adaptability to the requirements of every class of undertaking.—LAWRENCE R. DICKSEE, F.C.A., Professor of Accounting in the University of Birmingham; Author of "Auditing," "Book-keeping for Accountant Students," etc.

Book-keeping—Bibliography.—RICHARD BROWN, C.A., Secretary of the Society of Accountants in Scotland.

Brewers' Accounts.—C. D. CAMPBELL, Edinburgh.

Builders' Accounts.—JOHN A. WALBANK, A.C.A., Author of "Builders' Accounts," Newcastle-upon-Tyne.

ENCYCLOPÆDIA

OF

ACCOUNTING

"A" List of Contributories.—The list of members, or representatives of members, on the list of shareholders at the winding up of a company, and who as such are primarily liable to contribute. It is usually divided into two parts—(1) contributories in their own right; and (2) contributories as representative of or liable to the debts of others, *e.g.* executors or trustees in bankruptcy of members.

Abatement, or Rebate, is a deduction, draw back, or decrease made or a proportionate reduction of a payment allowed for special reasons; as, for example, for prompt payment or in respect of damage to goods.

Abstract of Title is an epitome of the evidence of ownership showing the right to an estate. The purchaser of a freehold estate is entitled to have such evidence for a period of forty years, or, in the case of advowsons, for a period of one hundred years. An abstract is sufficient if it shows that the vendor is himself competent to convey or can procure the vesting of the purchaser in the estate free from encumbrances.

A/c or Acc't.—Contractions for Account.

Acceptance.—In relation to contracts generally, the term "Acceptance" means the expression of assent by one person to a proposal made by another. In connection with contracts of sale, there is acceptance when the buyer intimates to the seller that he has accepted the goods, or it may be sufficient proof of acceptance if the buyer does any act in relation to the goods inconsistent with the ownership of the seller.

In relation to bills of exchange, an acceptance means the acknowledgment of a drawee of his obligation to pay the amount in the bill of exchange by writing his name upon the bill. The drawee is said then to accept the bill, and thereafter the bill itself is frequently called an acceptance. An acceptance of a bill may be either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

Acceptor.—The person upon whom a bill of exchange is drawn (the drawee), by signifying his assent to the document by writing his name upon it, becomes the acceptor.

Accident Insurance is a contract under which the insurer contracts to pay a certain sum in the event of injury or death from accident, and the insured becomes bound to pay a certain sum in name of premium. The system of insurance against accident was largely due to the advancement of railway travelling. Between 1845 and 1850 thirteen accident insurance offices were projected, although only one of these still exists. At first the premiums were arrived at very roughly, but they have now been made more in proportion to the risks incurred, and by classifying the different risks an endeavour has been made to make each class of insurance remunerative. The Employers' Liability Act 1850 and the Workmen's Compensation Acts have made further scope for the principle. An arbitration clause is usually inserted in an accident insurance policy, whereby the settlement of disputed claims is arrived at without having recourse to the law courts. The contract itself is called an insurance policy. The usual form of policy entitles the insured or his representatives to certain fixed payments in case he sustains any bodily injury caused by violent, accidental, external, and visible means, and resulting in death or disablement within three months of the accident.

The contract is to a limited extent a contract of indemnity, because the agreed-on compensation does not necessarily bear any relation to the income or wealth of the insured. The period of payment for disablement is sometimes limited to half a year. The policy of insurance may be taken out for any stated period, or it may be for a single journey or a certain class of risk. The usual accident policy runs for a year, and is renewable at the company's option.

At all railway stations tickets may be purchased insuring the purchaser against accident for the particular journey upon which he is going.

The existence of an accident policy, and any payment received under it, does not prevent the insured or his representatives from recovering damages in respect of the injury from those responsible for the accident.

Accommodation Bill. *See* BILLS OF EXCHANGE.

Account.—On the Stock Exchange there are settlements twice each month in General Securities, and once a month in British Consols and Indian Government Sterling Stocks, the dates of these settlements being fixed by the Stock Exchange Committees. The account begins after one settlement and ends at the date of the next. Transactions are said to be for the account, and prices are quoted for the account, to distinguish these transactions from bargains for cash. Practically, all speculation which goes on on the Stock Exchange, and also most of the ordinary business, is done by buying or selling for the account.

Account is used in book-keeping as meaning a particular group or class of entries in the ledger, relating to a person, a kind of property, or a branch of the Profit and Loss Account. An account shows the transactions with the person whose account it is, if it is a personal account; the cost of purchases and price realised on sales of goods, or the value of the article as an asset,

if it is a goods account; or the income or expenditure for the period under that head, if it be a branch of the Profit and Loss Account.

The term is also commonly used to signify a statement rendered periodically by a creditor to his debtor, showing their transactions and the balance payable to settle. In fact, the term in its widest sense embraces every form of statement which brings out the result of business dealings in money.

Account Current.—An account current is an account that runs on more or less indefinitely, as opposed to one balanced at regular intervals. The liability under an account current is usually reduced from time to time by sums paid on account and not appropriated against specific debits.

From the very nature of the account, it is usual to charge interest on the various items making up the balance of an account current, the rate of such interest varying according to agreement or the usage of the trade.

For the purpose of charging interest, and also for the purpose of comparing the items in the account, interest statements are delivered at regular intervals; when such statements have been accepted by the parties as correct, the charge for interest, as shown on the statement, is passed into the ledger, and the balance of the account struck; this balance, which is the same balance as that shown in the statement, is then brought down, and the usual plan is to make a note in the ledger stating that such balance is the agreed balance "as per statement rendered," giving the date of the statement and a reference to the copy-book in which a copy of the statement may be found.

Accounts current are common in many businesses, especially in certain commission businesses; a familiar example of an account current is furnished by the ordinary running account with a banker.

The terms "current account" and "account current" are sometimes used as meaning an account not yet stated, or an account not yet due for payment; but these terms, so used, must not be confounded with the more specific meaning of the term "account current" which is well recognised as having the meaning given above.

The form most frequently used in rendering a statement of an account current is appended. In many businesses it happens that, at the date when such statement is rendered, some of the debit items are not yet due for payment, or some of the credit items, *e.g.* a bill of exchange, have not yet matured. As the interest is calculated to the date of the statement it is necessary to make an allowance in respect of such items; the usual plan is to show the interest on such items in red ink, the reason being that the interest appearing against such of these items as are debits (and therefore appearing on the debit side of the account) is interest that has to be credited, and *vice versa* interest that appears against such of these items as are credits is interest that has to be debited.

The mode of dealing with such items is clearly shown on the accompanying form:—

LONDON, *June* 30.

Messrs. BLANK & Co.

in account with

ARTHUR EAST & Co., London.

Interest at 5 per cent to June 30.

Dr. *Cr.*

		Due Date.	Days.	Interest.							Due Date.	Days.	Interest.			
Jan. 1.	To Goods . . .	Feb. 1.	149	£1	4	6	£60	0	0	Jan. 16.	By Goods . . .	Feb. 16.	134	£0	5	6	£15	0	0
16.	,, Do. . . .	16.	134	1	7	6	75	0	0	Mar. 5.	,, Cash . . .	Mar. 5.	117	0	3	2	10	0	0
Feb. 8.	,, Cash . . .	8.	142	0	9	9	25	0	0	15.	,, 3 months' bill .	June 18.	12	0	3	11	120	0	0
Mar. 16.	,, Goods . . .	April 16.	75	0	9	3	45	0	0	June 1.	,, Do. .	Sept. 4.	66	1	16	2	200	0	0
June 16.	,, Do. . . .	July 16.	16	0	3	6	80	0	0	30.	,, Interest in red per contra	...	...	0	15	6			
25.	,, Do. . . .	25.	25	0	2	9	40	0	0										
26.	,, Carriage . .	June 26.	4	0	1	8	150	0	0										
28.	,, Goods . . .	July 28.	28	0	9	3	120	0	0										
30.	,, Interest in red per contra	...	...	1	16	2													
				£5	8	10	£595	0	0					£1	8	1	£345	0	0
30.	,, Balance of interest	...	...		...		4	0	9	30.	,, Balance of interest to contra	...	...	4	0	9			
											,, Balance . .	...	...		...		254	0	9
		...	...	£5	8	10	£599	0	9					£5	8	10	£599	0	9
June 30.	To Balance . .						£254	0	9										

The foregoing remarks explain the mode of dealing with the interest in the above statement. The interest items in bold type of 3s. 6d., 2s. 9d., and 9s. 3d. respectively on the debit side of the account are items that have to be allowed to the customer as the interest for the days between the date of the statement and the dates when the items, in respect of which such interest is calculated, are due for payment; this credit is effected by transferring the total of the interest in bold type on the debit side into the credit interest column, where it appears under the heading "Interest in red per contra"—the same process is gone through with respect to the debit interest "in red" of £1 : 16 : 2. After these transfers are made, in casting the interest columns, for the purpose of charging the balance of interest, no notice is taken of the figures in red which have already been dealt with.

HERBERT L. TEBBS.

Account Current, Interest on.—Interest is very often charged on the debit balances and allowed on the credit balances of accounts current. Thus, in the case of a trust estate the factor might charge the trust, interest say at 5 per cent or at bank overdraft rates, on all monies advanced by him, and might allow the trust, interest at, say 2 per cent or at bank deposit receipt rates, on sums belonging to the trust in his hands.

There are various ways in which accounts current with interest are stated, but the working-out of the various methods is either performed by means of interest tables or by products, as now shown.

Let the following be taken as an example of an account current:—

John Smith, Account Current.

June 1.	To Balance	£100	0	0	July 5. By Cash	£250	0	0
July 1.	,, Goods	300	0	0	Aug. 12. ,, do.	300	0	0
Aug. 4.	,, do.	200	0	0	Nov. 9. ,, do.	350	0	0
Oct. 3.	,, do.	400	0	0	Dec. 12. ,, do.	100	0	0
Dec. 4.	,, do.	150	0	0				

The methods in which the account may have interest charged on it are as follows:—

I.—USING INTEREST TABLES

Form I.

					Days.	Interest per Tables.								Days.	Interest per Tables.		
		£	s.	d.		£	s.	d.				£	s.	d.		£	s.	d.
June 1.	To Balance	100	0	0	213	2	18	4½	July 5.	By Cash .		250	0	0	179	6	2	7½
July 1.	,, Goods .	300	0	0	183	7	10	5	Aug. 12.	,, do. .		300	0	0	141	5	15	10½
Aug. 4.	,, do. .	200	0	0	149	4	1	7½	Nov. 9.	,, do. .		350	0	0	52	2	9	10½
Oct. 3.	,, do. .	400	0	0	89	4	17	6½	Dec. 12.	,, do. .		100	0	0	19	0	5	2½
Dec. 4.	,, do. .	150	0	0	27	0	11	1½	31.	,, Balance of interest						5	5	5½
31.	,, Interest	5	5	5½						,, Balance, including interest.		155	5	5½				
		1155	5	5½		19	19	0½				1155	5	5½		19	19	0½
Jan. 1.	To Balance	155	5	5½														

In the above example interest is charged at the rate of 5 per cent on the debit items and allowed at the same rate on the credit items up to 31st December. The difference between the two interest columns gives the interest due on the whole account for the year.

Another way of arriving at the same result is by calculating interest on the balances from day to day. The account would, in this case, appear as follows:—

Form II.

				Days.	Interest per Tables.
June 1.	To Balance . . .		£100 0 0	30	£0 8 2¾
July 1.	,, Goods . . .		300 0 0		
		Dr.	£400 0 0	4	0 4 4½
,, 5.	By Cash		250 0 0		
		Dr.	£150 0 0	30	0 12 4
Aug. 4.	To Goods . . .		200 0 0		
		Dr.	£350 0 0	8	0 7 8¼
,, 12.	By Cash		300 0 0		
		Dr.	£50 0 0	52	0 7 1¾
Oct. 3.	To Goods . . .		400 0 0		
		Dr.	£450 0 0	37	2 5 7¼
Nov. 9.	By Cash		350 0 0		
		Dr.	£100 0 0	25	0 6 10
Dec. 4.	To Goods . . .		150 0 0		
		Dr.	£250 0 0	8	0 5 5¾
,, 12.	By Cash		100 0 0		
		Dr.	£150 0 0	19	0 7 9¾
,, 31.	To Interest . . .		5 5 5¾		
Balance due			£155 5 5¾		£5 5 5¾

II.—By means of Products

The other method of calculating interest is by means of products, and the foregoing example, with interest calculated in this way, would appear as follows:—

Form III.

		£	s.	d.	Days.	Products.			£	s.	d.	Days.	Products.
June 1.	To Balance	100	0	0	213	21,300	July 5.	By Cash .	250	0	0	179	44,750
July 1.	,, Goods .	300	0	0	183	54,900	Aug. 12.	,, do. .	300	0	0	141	42,300
Aug. 4.	,, do. .	200	0	0	149	29,800	Nov. 9.	,, do. .	350	0	0	52	18,200
Oct. 3.	,, do. .	400	0	0	89	35,600	Dec. 12.	,, do. .	100	0	0	19	1,900
Dec. 4.	,, do. .	150	0	0	27	4,050	31.	,, Balance of interest numbers					38,500
,, 31.	,, Interest	5	5	5¾				,, Balance, including interest .	155	5	5¾		
		1155	5	5¾		145,650			1155	5	5¾		145,650
Jan. 1.	To Balance	155	5	5¾									

The rule for arriving at the interest by means of products is as follows:—

Multiply each item in the account by the number of days from its date to the date of settlement, or to any given date to which it is desired to find the interest. Take the balance of the products, multiply by twice the rate per cent, and divide by 73,000. This gives the interest on the account.

If the interest on the debit and credit sides is at different rates, the multiplication by twice the rate should be performed on the totals of the two sides, and thereafter the balance should be divided by 73,000.

In the example given the balance of interest numbers is 38,500. Twice the rate per cent, which is 5 per cent, is 10. Then 38,500 multiplied by 10 gives 385,000. Dividing 385,000 by 73,000 we get £5 : 5 : 5¾, as follows, using contracted division:—

```
73000)385000(5·2739 = £5 : 5 : 5¾.
      365000
      ------
       20000
       14600
       -----
        5400
        5110
        ----
         290
         219
         ---
          71
          63
          --
```

Working out this example by products, but taking the balances from day to day, the account would appear as follows:—

Form IV.

			Days.	Products.
June 1.	To Balance	£100 0 0	30	3,000
July 1.	,, Goods	300 0 0		
	Dr.	£400 0 0	4	1,600
,, 5.	By Cash	250 0 0		
	Dr.	£150 0 0	30	4,500
Aug. 4.	To Goods	200 0 0		
	Dr.	£350 0 0	8	2,800
,, 12.	By Cash	300 0 0		
	Dr.	£50 0 0	52	2,600
Oct. 3.	To Goods	400 0 0		
	Dr.	£450 0 0	37	16,650
Nov. 9.	By Cash	350 0 0		
	Dr.	£100 0 0	25	2,500
Dec. 4.	To Goods	150 0 0		
	Dr.	£250 0 0	8	2,000
,, 12.	By Cash	100 0 0		
	Dr.	£150 0 0	19	2,850
,, 31.	To Interest . . .	5 5 5¾		
	Balance due . .	£155 5 5¾		38,500

In the example given above, interest has been charged and allowed on the debit and credit items at the same rate. Very often, however, interest at one rate is charged on the debit items, and interest at another rate on the credit items.

Suppose that 5 per cent is to be charged on the debit items and 3 per cent on the credit items, then the account would appear as follows:—

USING INTEREST TABLES

JOHN SMITH—*Account Current.*

Interest at 5 per cent on Debit Items, and 3 per cent on Credit Items.

		£	s.	d.	Days.	Interest at 5 per cent per Tables. £	s.	d.			£	s.	d.	Days.	Interest at 3 per cent per Tables. £	s.	d.
June 1.	To Balance	100	0	0	213	2	18	4¼	July 5.	By Cash .	250	0	0	179	3	13	6½
July 1.	,, Goods .	300	0	0	183	7	10	5	Aug. 12.	,, do. .	300	0	0	141	3	9	6¼
Aug. 4.	,, do. .	200	0	0	149	4	1	7¾	Nov. 9.	,, do. .	350	0	0	52	1	9	10¾
Oct. 3.	,, do. .	400	0	0	89	4	17	6½	Dec. 12.	,, do. .	100	0	0	19	0	3	1½
Dec. 4.	,, do. .	150	0	0	27	0	11	1¼	31.	,, Balance of interest					11	2	11½
31.	,, Interest	11	2	11½						,, Balance	161	2	11½				
		1161	2	11½		19	19	0¾			1161	2	11½		19	19	0¾
Jan. 1.	To Balance	161	2	11½													

BY MEANS OF PRODUCTS

JOHN SMITH—*Account Current.*

Interest at 5 per cent on Debit Items, and 3 per cent on Credit Items.

		£	s.	d.	Days.	Products.				£	s.	d.	Days.	Products.
June 1.	To Balance	100	0	0	213	21,300	July 5.	By Cash .		250	0	0	179	44,750
July 1.	,, Goods .	300	0	0	183	54,900	Aug. 12.	,, do. .		300	0	0	141	42,300
Aug. 4.	,, do. .	200	0	0	149	29,800	Nov. 9.	,, do. .		350	0	0	52	18,200
Oct. 3.	,, do. .	400	0	0	89	35,600	Dec. 12.	,, do. .		100	0	0	19	1,900
Dec. 4.	,, do. .	150	0	0	27	4,050								
31.	,, Interest	11	2	11		145,650								107,150
						10								6
						1,456,500								642,900
							31.	,, Balance of interest numbers						813,600
								,, Balance		161	2	11		
		1161	2	11		1,456,500				1161	2	11		1,456,500
Jan. 1.	To Balance	161	2	11										

The calculation by interest tables is very simple, the 3 per cent column being substituted for the 5 per cent in the case of the credits.

The working by products is slightly different. After obtaining the total of the products on the debit and credit sides, namely 145,650 and 107,150, the total of the debit side is multiplied by 10, being twice the rate per cent, which is 5 per cent for debit items, and the total of the credit side is multiplied by 6, being twice the rate per cent, which is 3 per cent for credit items. The balance of products, namely 813,600, is divided by 73,000, which gives £11 : 2 : 11, as follows :—

```
73000)813600(11·145 = £11 : 2 : 11.
      73000
      -----
      83600
      73000
      -----
      10600
       7300
       ----
       3300
       2920
       ----
        380
        365
        ---
```

In this case, where the rates of interest charged and allowed are different, there occurs a difference of ½d. between the interest per the tables and that calculated by products. The interest as calculated by products is the more correct method, because fractional parts are not taken into account in the interest tables.

In many cases, such as between solicitors and clients, 5 per cent is charged on balances due by the clients, while 2½ per cent may be allowed on balances due to the client. For example, suppose the following account to be that between John Rose, solicitor, and R. Lilly, his client, the account being given as appearing in J. Rose's books.

R. LILLY.

Jan.	8.	To Cash	. .	£200	0	0	Jan.	15.	By Cash	. .	£300	0	0
	11.	,, do.	. .	50	0	0		20.	,, do.	. .	100	0	0
Feb.	3.	,, do.	. .	40	0	0	Mar.	15.	,, do.	. .	30	0	0
	10.	,, do.	. .	100	0	0		31.	,, Balance	. .	220	0	0
Mar.	11.	,, do.	. .	60	0	0							
	30.	,, do.	. .	200	0	0							
				£650	0	0					£650	0	0

It is now desired to charge 5 per cent on debit balances, and allow 2½ per cent on credit balances, the account closing on 31st March 1902.

This may be done by means of interest tables or by products, and the working out is as follows :—

I. Using Interest Tables

5 per cent on Debit Balances, and 2½ per cent on Credit Balances.

					Days.	Interest at 5 per cent on Debit Balances.	Interest at 2½ per cent on Credit Balances.
Jan.	8.	To Cash	*Dr.*	£200 0 0	3	£0 1 7½	
	11.	,, do.		50 0 0			
			Dr.	£250 0 0	4	0 2 9	
	15.	By do.		300 0 0			
			Cr.	£50 0 0	5		0 0 4
	20.	,, do.		100 0 0			
			Cr.	£150 0 0	14		0 2 10½
Feb.	3.	To do.		40 0 0			
			Cr.	£110 0 0	7		0 1 0¾
	10.	,, do.		100 0 0			
			Cr.	£10 0 0	29		0 0 4¾
Mar.	11.	,, do.		60 0 0			
			Dr.	£50 0 0	4	0 0 6½	
	15.	By do.		30 0 0			
			Dr.	£20 0 0	15	0 0 9¾	
	30.	To do.		200 0 0			
			Dr.	£220 0 0	1	0 0 7½	
						£0 6 4½	£0 4 8
	31.	To Interest		0 1 8½			0 1 8½
				£220 1 8½		£0 6 4½	£0 6 4½

It should be very carefully noted that in the example shown on page 8 the different rates of interest are charged and allowed on the debit and credit items respectively, while in the above example the debit rate of 5 per cent is charged, not on the debit items, but on the balance of the account when it is a debit balance, and the credit rate of 2½ per cent is allowed the client, not on every item placed to his credit, but on the balance of his account, when such balance is on the credit side. The distinction is very important, and the latter method is the more useful one, being based on more reasonable considerations than could ever be adduced in favour of such a contract as the former example assumes. The foregoing example worked out by products would be as follows:—

II. By means of Products

5 per cent on Debit Balances, and 2½ per cent on Credit Balances.

				Days.	Debit Products.	Credit Products.
Jan. 8.	To Cash . . .	*Dr.*	£200 0 0	3	600	
11.	,, do. . . .	.	50 0 0			
		Dr.	£250 0 0	4	1000	
15.	By do. . . .	.	300 0 0			
		Cr.	£50 0 0	5		250
20.	,, do. . . .	.	100 0 0			
		Cr.	£150 0 0	14		2100
Feb. 3.	To do. . . .	.	40 0 0			
		Cr.	£110 0 0	7		770
10.	,, do. . . .	.	100 0 0			
		Cr.	£10 0 0	29		290
Mar. 11.	,, do. . . .	.	60 0 0			
		Dr.	£50 0 0	4	200	
15.	By do. . . .	.	30 0 0			
		Dr.	£20 0 0	15	300	
30.	To do. . . .	.	200 0 0			
		Dr.	£220 0 0	1	220	
					2320	3410
31.	To Interest . . .	.	0 1 8¼		10	5
		Dr.	£220 1 8¼		23200	17050
					17050	

73000)6150(0 : 1 : 8¼
20
123000
73000
50000
12
600000
584000
16000
4
64000

Account Duty.—This was a duty levied under the Customs and Inland Revenue Act 1881, which was amended by the Customs and Inland Revenue Act 1889. It was levied on personal property passing on death by way of *donatio mortis causâ*, joint investment or voluntary settlement, or under a policy of insurance kept up for a donee, or passing by a voluntary disposition, *inter vivos*, within a certain time from death. Estate duty is by the Finance Act of 1894 substituted for account duty, except in one or two cases mentioned in the Finance Act of 1894 (sec. 21, (1) (2)).

Account Sales is a statement of goods sold on commission sent by the consignee to the consignor. It usually specifies the marks, numbers, and particulars of the goods and their selling prices. The charges for freight, landing, storing, insurance, and commission are deducted from the gross proceeds, and the balance or net proceeds shown.

Accounts, Falsification of.—This is a misdemeanour under the Falsification of Accounts Act 1875. It may be committed by any clerk, officer, or servant. The offence lies in (*a*) wilfully and with intent to defraud, destroying, altering, mutilating, or falsifying any book, paper, writing, valuable security, or account which belongs to, or is in possession of his employer, or has been received by him for or on behalf of his employer; or (*b*) wilfully and with intent to defraud, making or concurring in the making of any false entry in or omission or alteration, or concurring in omitting or altering, any material particular from or in any such book or in any document or account.

Accountant.—An accountant is a person skilled in accounts, and the term may be used to designate either one who makes the examination and stating of accounts his profession, or an officer in a public office in charge of the accounts. This article treats of the former class only.

The profession of accountant is one of considerable antiquity, although it was only during the latter half of the nineteenth century that it attained to a position of importance. The practice of auditing accounts is mentioned in writings as early in date as the thirteenth century, but it is not until the early part of the seventeenth century that we find indications of accounting being followed as an independent profession. Gerard Malynes in his *Lex Mercatoria*, first published in 1622, speaks of "those which we call Auditors or Accountants," adding that they "are to be very judicious in matter of account, as skilful in the accounting." The author of *The Merchants' Mirrour*, dated 1636, designs himself "Richard Dafforne of Northampton, Accountant, and Teacher of the same." He includes in his book a commendation of himself and his work by "Ralph Handson, Accomptant." In 1660 "Abraham Liset, Gent.," published *The Accountant's Closet*, and in 1683 Robert Colinson of Edinburgh wrote *The Perfect Accomptant*, explaining that he had been "both a Student and Practitioner now these twenty-five years." In 1714 *The Gentleman Accomptant* appeared, written by "A Person of Honour." *A New Treatise of Arithmetick and Book-keeping*, published in 1718 by "Alexander Malcolm, Teacher of the said Arts in Edinburgh," announces itself as "Recommended by the most famed Accomptants in North Britain."

A report in connection with the notorious South Sea Bubble, on entries in the books of one of the directors, written by "Charles Snell, Writing Master and Accountant in Foster Lane, London," probably in 1720, has been preserved. "Richard Hayes, Accomptant and Writing Master of Queen Street, Cheapside," wrote on book-keeping in 1731 and 1739.

Enough has been quoted to show that the profession has existed in this country for at least a period of nearly three hundred years. In Scotland especially it has for a very long time been recognised as a profession of great responsibility and importance. It is known that from the middle of the eighteenth century—however earlier—a body of eminent men practised as accountants in Edinburgh.

It was in Edinburgh that the first step was taken for the organisation

of the profession of accountant. On January 20, 1853, a meeting was held with the object of "uniting the Professional Accountants in Edinburgh," and as a result a society was formed, which was incorporated by Royal Charter in 1854 as "The Society of Accountants in Edinburgh." In Glasgow similar proceedings followed, and the society there was in 1855 incorporated by Royal Charter under the title of "The Institute of Accountants and Actuaries in Glasgow." "The Society of Accountants in Aberdeen" was similarly incorporated in 1867. These three Scottish societies were affiliated in 1893 by joint agreement establishing uniform rules relating to qualification for, and admission to membership and a general board of examiners.

In 1870 "The Institute of Accountants" was formed in London and a Society of Accountants at Liverpool. In 1871 a Society of Accountants was established in Manchester. In 1872 "The Society of Accountants in England" was formed in London, and in 1877 a Society of Accountants in Sheffield. These societies joined together, and were incorporated by Royal Charter in 1880 under the name of "The Institute of Chartered Accountants in England and Wales." In 1888 "The Institute of Chartered Accountants in Ireland" was incorporated by Royal Charter.

The members of the foregoing societies and institutes are known as chartered accountants. Those connected with the three Scottish societies use the letters "C.A." after their names as an abbreviation of this professional designation, and those connected with the institutes of England and Ireland the letters "F.C.A." when they are Fellows, and "A.C.A." when they are Associates of the institute.

On December 31, 1901, the number of Scottish chartered accountants was 757, of whom 55 were not resident in the United Kingdom. At the same date the Institute of Chartered Accountants in England and Wales had 2813 members, of whom 115 were not in England or Wales; and the Institute of Chartered Accountants in Ireland had 59 members.

In 1885 a society called "The Society of Accountants and Auditors" was formed in London, and was registered under the Companies Acts as an association, by licence from the Board of Trade under section 23 of the Companies Act 1867. An association calling itself the Scottish Institute of Accountants was formed in Glasgow in the year 1880, and on three separate occasions endeavoured to obtain incorporation by Royal Charter, but was unsuccessful. In 1899 it was absorbed by the above-mentioned Society of Accountants and Auditors, and became the Scottish branch of that body. The Society of Accountants and Auditors at December 31, 1901, had 1643 Fellows and Associates, of whom about 140 were in Scotland, 30 in Ireland, and 180 not resident in the United Kingdom. The members of the Society of Accountants and Auditors call themselves incorporated accountants, and use the letters "F.S.A.A." for Fellows, and "A.S.A.A." for Associates.

In 1891 seven individuals in Glasgow formed and registered a company under the title of "The Corporation of Accountants, Limited," and issued certificates to its members professing to entitle them to designate themselves "Corporate Accountants," and to take and use any initials or abbreviation thereof. In 1893 proceedings were taken in the Scottish courts at the instance of the three Scottish chartered societies against certain members of this Corporation, the result of which was that they were interdicted "from using, for professional purposes or as a professional designation, the letters 'C.A.,' or any other letters or words or abbreviations of words calculated to lead the public to believe that they were members of

one or other of the bodies of Accountants in Scotland which are incorporated by Royal Charter."

In Canada, Australia, New Zealand, and South Africa there are a number of societies of accountants, most of them of recent formation. In the United States of America there has, within the last few years, been a remarkable growth in the number of professional accountants, and various societies have been formed. In the States of New York, Pennsylvania, and Maryland, Acts of the Legislature have been passed providing for the examination and registration of public accountants and the granting of the exclusive right to the title "Certified Public Accountant" and the letters "C.P.A." In India a certain number of accountants, both British and native, find occupation. In European countries, other than the United Kingdom, Italy appears to be the only nation where professional accountants exist in large numbers and are organised in societies. In France, Belgium, and Holland a certain number are found, and at Utrecht a Dutch Institute of Accountants was founded in 1895, but apparently the profession has not yet taken a high position in these countries. In Russia, Sweden, Germany, Austria, and Spain the work of the accountant seems to devolve, to a great extent, upon solicitors and notaries.

The following is an account in concise form of the kind of work which, in this country, has come to be regarded as the special province of the professional accountant:—

Auditing and reporting on the accounts of companies, corporations, public bodies, societies, institutions, private firms and individuals.

Drawing up balance sheets, states of affairs, schemes of division, and other statements of accounts.

Investigating books and accounts with the view of certifying as to profits, accounting for losses, or tracing defalcations.

Reporting on and unravelling accounts under remits from the courts.

Designing systems of book-keeping and keeping accounts, and advising thereon.

Acting as arbitrator or as an expert witness in judicial proceedings and in arbitrations where matters of accounting are involved.

Acting as secretary or accountant of companies or other concerns which have not such officers of their own.

Managing as factor, appointed by the courts, the estates of persons under some legal incapacity, or as trustee or factor estates voluntarily placed under an accountant's charge.

Winding-up and distributing estates in bankruptcy, insolvency, or liquidation, including estates of persons deceased.

In England and Ireland, owing to the existence of Government auditors for the accounts of local authorities and official receivers in bankruptcies and company liquidations, accountants there do not enjoy so much of that class of business as in Scotland, where there are no such officials.

It is noteworthy that when, in 1854, the Society of Accountants in Edinburgh presented its petition for incorporation by Royal Charter, though the duties performed by an accountant are described in considerable detail in the petition, no mention is made of auditing, which is now perhaps the most important part of an accountant's business. At that date the Companies Act of 1862, from which the great development of joint-stock

company enterprise dates, had not been passed. The necessity of the accounts of such companies being annually audited was soon generally recognised, and was enforced by Act of Parliament—in the case of banking companies in 1879, and of other companies in 1900. It is to this and to legislation regulating the administration of bankrupt estates and the estates of incapacitated persons that the rapid growth in the importance of the accountant profession during the latter part of the nineteenth century is mainly due. Concurrently with this advance in importance there has been a remarkable growth in the number of qualified accountants—the aggregate membership of the various chartered societies being now more than five times what it was when they obtained incorporation.

Any one proposing to become an accountant should pre-eminently possess the mathematical mind. He must have accurate perception, strong power of concentration, and clear and logical reasoning faculties. So endowed, he may be considered a fit subject for the training offered in the office of a practising accountant. In the course of this training he should be taught orderly and methodical habits, and specially the habit of verifying for himself every figure or fact of which he makes use, thus laying the foundation of that character for accuracy and reliability without which no one need expect to succeed as an accountant. In the course of service he should acquire familiarity with the details of professional work, and the recognised societies lay down rules and prescribe examinations, as hereafter explained, for further guidance in his professional education. But withal, he will still want something of the equipment of the "Perfect Accomptant." He must be possessed of practical business sagacity, a demeanour such as inspires the confidence of his clients, and, it need scarcely be said, a character of the strictest rectitude. There are few professions where a keen power of discrimination between the straight and the crooked is more frequently required, and where any laxity in following sound principles has more far-reaching consequences.

As regards the way to become a chartered accountant, or, to speak more correctly, the means by which admission may be obtained as a member either of the Society of Accountants in Edinburgh, the Institute of Accountants and Actuaries of Glasgow, the Society of Accountants in Aberdeen, the Institute of Chartered Accountants in England and Wales, or the Institute of Chartered Accountants in Ireland, a Preliminary Examination in general education must be passed; an apprenticeship of five years with a qualified professional accountant must be served; an Intermediate Examination, chiefly in elementary professional knowledge, must be passed; and a Final Examination, covering law and all branches of professional knowledge, must be passed. In Scotland, candidates must also attend law classes at one of the universities, and must pass at the Final Examination in the subjects of actuarial science and political economy.

The Final Examination for Scottish chartered accountants is held half-yearly, at several centres simultaneously, and occupies four days. The following is the syllabus:—

LAW OF SCOTLAND:—

Paper No. 1—

Insolvency and Bankruptcy, including Trust Deeds for Creditors.
The Companies Acts.
Judicial Factories.

Paper No. 2—

Partnership.
References and Arbitrations.
Bills, Cheques, and Deposit Receipts.
Sale, Insurance, and Cautionary Obligations.
Fee and Liferent.

ACTUARIAL SCIENCE:—

Paper No. 3—

Compound Interest and Annuities certain.
The Elementary Principles of Life Annuities, Assurances, and Reversions.

POLITICAL ECONOMY:—

Paper No. 4—

The examination involves an elementary knowledge of economic principles, and more special knowledge of one or more of the following topics, to vary from time to time: Statistics, Rate of Interest and Investments, Currency, Banking, Credit, Commercial Crises, National and Municipal Debts, Taxation.

GENERAL BUSINESS OF AN ACCOUNTANT:—

Paper No. 5—

The Theory and Practice of Book-keeping, including the Preparation of Balance Sheets, Profit and Loss Accounts, and Partners' Accounts; also Joint Adventure and Consignment Accounts.

Paper No. 6—

The Procedure and Requisites in the Audit of Accounts and Books, including those of Public Bodies, Companies, Firms, and Trust Estates.

Paper No. 7—

The Management of Bankrupt Estates, Private Trusts, Heritable Estates, Curatorial and Judicial Factories, etc.; and the framing of the necessary Accounts of Intromissions, Schemes of Division, Interest States, Apportionments, etc.

Paper No. 8—

The Formation, Administration, Reconstruction, and Liquidation of Public Companies.
The Procedure under Judicial and Private References, Remits, and Proofs.

It will be seen from the foregoing that the training provided and the tests imposed before admission to membership are such as to ensure—so far as training and the test of examinations can do so—that every person entitled to describe himself as a chartered accountant is well qualified for the practice of his profession in all its branches.

The Society of Accountants and Auditors also conducts examinations, and prescribes a period of service, although in its case these conditions have not hitherto been so rigidly enforced upon those desiring admission to membership as in the case of the chartered societies.

RICHARD BROWN.

ACCOUNTANTS ABROAD

In no country has so much progress been made in the theory of book-keeping as in the little country of Holland.

Book-keeping may be essentially a practical business, but it cannot be denied that a good, clear knowledge of the underlying principles of double-entry simplifies the work. Starting from this point of view, the Dutch pioneers in book-keeping and arithmetic have tried (in a great number of instruction-books) to explain first, as clearly as possible, the theory of double-entry to the pupil. Some of the teachers continued to use the old instruction-books of their ancestors of centuries ago; others made use of books published in Germany; whilst still others created for themselves a new theory. Books by Dutch authors frequently gained first prizes at the book-keeping competitions.

Of course this is not the place to discuss the advantages or disadvantages of one kind of explanation over the other. Here it may be sufficient to state that the result of that "Battle of Theories" has been, on the one side, an increasing interest in the study of double-entry, and, on the other side, people have lost sight of the fact that the knowledge of the theory of book-keeping ought to be only a means, and not an end.

Gradually, however, the practical side of the science of book-keeping is coming to be judged the most important one.

The constantly increasing interest in the study of book-keeping has induced three Institutes or Unions to organise examinations of candidates. Such examinations have taken place regularly twice a year for a number of years. At these examinations proof must be given of sufficient knowledge of book-keeping; also that the candidate is acquainted with the customs of the different branches of trade in the principal markets of Europe and America, and with the several methods used in business transacted there. Further, knowledge of the Dutch code of commerce is required, and also the rudiments of civil law, which are of particular importance to the merchant.

The number of candidates is always very considerable, and increases every year, although the standard is continually being raised. Those who succeed receive a certificate, and possession of this is demanded more and more by the merchants to whom young clerks apply for a position.

Two of the above-mentioned Unions consist of clerks, and the third admits to membership only those who are teachers of book-keeping.

In order to become a teacher the Government examinations have to be passed. For these examinations, the requisites for the practical part of book-keeping are about the same as for the examinations of the Unions. Moreover, a knowledge of the theoretical side is required, as also proficiency in the explanation of the several calculations used in trade, *i.e.* a general ability to teach the science of book-keeping. This examination is annually passed by a great number of candidates. Any one who possesses the Government certificate is entitled to give instruction at a "Hoogere Burgerschool" (school for more advanced scholars). Those who wish to extend their studies further, have to pass

an examination to obtain the membership of the "Dutch Institute of Accountants."

Before speaking about the requirements thereof, we wish to say something about this body, which has attained in a comparatively short time to a high position in the Dutch book-keeping world. Whilst in England "The Institute of Chartered Accountants" has exercised for thirty years its mighty influence, the class known as Accountants was not organised in Holland until 1895. On the first of January 1895, the above-mentioned body was established by a number of accountants who had already been practically engaged in this branch for a long while. The founders followed mainly the example of the English Institute, though the statutes contain several clauses which diverge from those of the sister institution. Those who are in possession of a diploma of one of the above-mentioned Unions, or of the Government certificate, may be admitted as assistants of the Institute. They are not obliged (as in England) to take service with a member of the Institute. Each man remains quite free, but in order to be appointed a second-class member he must have passed the examination in full.

The programme of the examination is as follows:—

A. *General Knowledge*

1. Knowledge of the most important markets of import and export, and also of the principal channels of communication.
2. Acquaintance with the history of the commerce and industry of Holland and its colonies during the last 100 years.
3. Knowledge of three modern languages (besides Dutch).
   (*a*) Reading and translation into Dutch of letters, reports, Acts, statutes, extracts from books, balance sheets, etc.
   (*b*) Drawing up of a simple report on a given scheme concerning the branches of accountancy.

B. *Accountancy*

4. Acquaintance with the most important books on the subject.
5. Fundamental knowledge of the practice and the different methods of book-keeping; regulation of books, examination of balance sheets, organising the book-keeping of commercial or industrial enterprises.
6. Knowledge of calculations used in trade, including arbitrage of bills, stocks, and goods, and how to make up parity-tables.
7. Acquaintance with the nature and the purpose of statistics, as applied to the administration of trades or industries.
8. Acquaintance with the credit-, money-, and banking-system of Holland, and with the systems of the more important countries.
9. Knowledge of commercial law, and, further, of all enactments contained in civil law, and in the law of criminal jurisdiction so far as they are of interest to trade and commerce.
10. Acquaintance with all legal enactments regarding bankruptcy and liquidations.
11. Acquaintance with the drawing up of simple deeds and reports, and the framing of statutes.

From this it will be seen in how many aspects these requirements differ from those to which an English accountant desirous of joining the English Institute has to submit.

Candidates who have passed the examination with success are allowed to commence business as independent accountants, and after having been occupied in this way during five years, they become first-class members.

Since the foundation of the Institute, the profession of accountant has advanced further and further, but a great change has still to take place before it is as far advanced in Holland as it is in England. The greatest difficulty with which the Dutch accountant has to contend is the entire want of State rules and regulations, not only for his profession, but also for the control of companies, and enactments relating thereto concerning the issue of prospectus, annual reports, etc. Whilst in England every incorporated company is obliged to have its books examined by an auditor, the Dutch companies are, in this respect, completely free. It is true that under pressure of circumstances (particularly in consequence of great failures that have taken place of late) the professional assistance of an accountant is more taken advantage of than before, but it is not necessary to state, that so long as law does not *prescribe* such control, the position of the accountant in Holland must necessarily be inferior to that of the accountant in England. Consequently, Holland only possesses a few accountants' offices, organised on the same principle as those in England. Further, the majority of the members of the Institute are not solely accountants, but at the same time book-keepers, bankers, etc., and this certainly cannot be considered a healthy state of affairs.

But the Dutch may rejoice in knowing that, with the exception of Italy, their country is the only one on the Continent of Europe that has followed the good example of England, and it is to be expected that when the legal regulations, awaited with so much impatience by all parties interested, have been introduced, accountancy will take as high a position in Holland as in England.

TH. LIMPERG, Jr.

Accountant in Bankruptcy.—Owing to the increased amount of funds belonging to bankrupts' estates and the large number of accounts to be kept in connection therewith, the charge and management of these was in 1835, by 5 & 6 Will. IV. c. 29, sec. 3, transferred from the Accountant-General of the Court of Chancery to an accountant in bankruptcy to be appointed by the Lord Chancellor. Thereafter, all such funds were paid into the Bank of England in name of the Accountant in Bankruptcy to the credit of the different estates. The duties of the office were further defined by the Bankruptcy Act 1849, 12 & 13 Vict. c. 106, sec. 31. At the time of the passing of the Bankruptcy Act 1869, 32 & 33 Vict. c. 71, there were four accounts in his name, viz. "The Bankruptcy Fund Account," "The Chief Registrar's Account," "The Unclaimed Dividends Account," and "The Purposes of the 26th section of the Bankruptcy Act 1861 Account." The Bankruptcy Act 1861, 24 & 25 Vict. c. 134, sec. 12, enacted that the office should be abolished on the first vacancy, and that the duties should be transferred to the chief registrar; and by section 129 of the 1869 Act the accountant and other officials of the old London Bankruptcy Court were attached to the new London Bankruptcy Court constituted under the Act. By the Bankruptcy Act 1883, 46 & 47 Vict. c. 52, he and his staff were again transferred and made officers of the Board of Trade (sec. 153 (2) and (3)), and the account at the Bank of England kept for his purposes was directed to be transferred to the Bankruptcy Estates Account kept by the Board of Trade (sec. 74).

In Scotland the Accountant in Bankruptcy was an officer of court

appointed under the Bankruptcy (Scotland) Act 1856, 19 & 20 Vict. c. 79, secs. 156-163, whose duties were subsequently, by the Judicial Factors (Scotland) Act 1889, 52 & 53 Vict. c. 39, conjoined with those of the Accountant of the Court of Session.

JOHN R. M'ILRAITH.

Accountants' Charges.—To a considerable extent the remuneration paid to an accountant for his services is fixed before he enters upon his duties. Thus the fee for most audits is fixed before the audit is entered upon. With limited companies the remuneration of auditors appointed prior to the first general meeting is usually fixed by the directors, but by the Companies Act 1900 the remuneration must be fixed at the general meeting at which the auditors are appointed.

Where the accountant acts as general agent and adviser, and where there are no cash transactions upon which a commission may be charged, the accountant has to prepare a bill of charges, giving details of all his attendances, correspondence, and other work done. The charge for this varies according to the personal standing of the accountant and to the position of his client, together with the difficulty and responsibility of the work. In this accountants follow, as far as they can, the charges of solicitors for similar services.

For investigations into accounts and for opening books of account apart from any special agreement, the charges made per day of seven hours are as follows:—*principal*, three to twenty guineas; *managing clerks*, two to five guineas; *other clerks*, one to two guineas.

If the work has been out of town, an addition of two guineas per day for personal expenses, together with first-class railway fare, is usually charged.

In the case of bankruptcy work, the remuneration of the trustee is by a commission on the assets realised, or upon the dividend paid, in England; but in Scotland a commission on the amount realised only.

Accountant of Court.—An officer of the Scotch Law Courts who has charge of certain auditing and accounting work under various statutes. By the Pupils' Protection Act 1849 (12 & 13 Vict. c. 51), sec. 9, it is provided "That it shall be lawful for Her Majesty and her heirs and successors to appoint a person versant in law and accounts, to be called the Accountant of the Court of Session." By section 10 of the same Act the general nature of the Accountant's duty is stated as follows:—"The Accountant shall superintend generally the conduct of all judicial factors and tutors and curators coming under the provisions of this Act already appointed or to be hereafter appointed, and shall see that they duly observe all rules and regulations affecting them for the time." By section 156 of the Bankruptcy (Scotland) Act 1856 (19 & 20 Vict. c. 79), power was given "to appoint a person versant in law and accounts, to be called the 'Accountant in Bankruptcy,'" and other sections of this Act give the Accountant's duties in relation to trustees in bankruptcy and other matters. By the Judicial Factors Act 1889 (52 & 53 Vict. c. 39), the offices of "Accountant of the Court of Session" and "Accountant in Bankruptcy" were united, and the person so appointed is designated the "Accountant of Court." It was also provided by section 5 of this last-mentioned Act that "The provisions of the Pupils' Protection Act and of the Bankruptcy and Cessio Acts, relating to the Accountant of the Court of Session and

Accountant in Bankruptcy respectively, shall, so far as not altered by this Act, apply to the Accountant to be appointed in terms of this Act and his successors in office."

The duties of the Accountant of Court may for convenience be classed under the following heads:—

I. Bankruptcies:
   1. Sequestrations.
   2. Cessios.
II. Judicial Factories.
III. Trust Investments.
IV. Consignations.

I. Bankruptcies

1. *Sequestrations.*—It is the duty of the Accountant of Court to supervise the doings of trustees and commissioners appointed under the Bankruptcy Acts. The Accountant has no right to interfere with the actual administration and management of estates in bankruptcy; his power is one of control of trustees and commissioners, to the effect of providing for the performance of their duties. This power is official, and not in any sense judicial. It is exercised subject to the directions of the Court. Certified copies of the inventories of estates and of the accounts are lodged by trustees, and the Accountant is thus informed of the progress being made in each sequestration. The Accountant is also empowered to require production of the sederunt book.

When there is a dispute regarding the commission to be allowed to a trustee, the Accountant gives his opinion of what should be allowed, but this of course is not binding, and may be objected to when the whole matter will come before the Court.

Previous to the discharge of a trustee, the sederunt book must be transmitted to the Accountant for examination.

The Accountant superintends the annual returns required by the Bankruptcy Act from trustees, and frames an annual report showing the state of each sequestration.

The Accountant's concurrence is necessary where heritable property in a sequestration is proposed to be sold privately, but he does not become a party to the disposition.

The Accountant must keep a register of sequestrations, and also a register of unclaimed dividends.

The Accountant reports to the Lord Ordinary or Court any disobedience by a trustee or commissioners of any order by him.

Special reports are made by the Accountant when an additional allowance is proposed to be given to a bankrupt, and also where it is desired to pay a preferable claim out of the price of heritable property.

2. *Cessios.*—The Accountant of Court has also supervision over trustees in cessios, which is the method adopted to wind up small estates in bankruptcy. Copies of the trustee's accounts must be lodged with the Accountant by the trustee, after being adjusted by the sheriff, and also a copy of circular sent out by trustee in pursuance of section 5 of Act of Sederunt 1882 anent cessios. The Accountant makes up annually a report of all depending cessios. The Accountant, after a final division of funds has taken place under a cessio, and after the sederunt book, law account, and vouchers for dividends paid have been lodged with him, and any unclaimed dividends lodged in bank, grants a certificate discharging the trustee.

II. Judicial Factories

The following may be taken as the class of factors who are responsible to the Accountant of Court as regards lodging accounts, inventories, etc. :—

Factors *loco tutoris.*
Factors *loco absentis.*
Curators bonis.
Tutors at law.
Tutors nominate.
Guardians under the Guardianship Act 1886.
Factors appointed in pursuance of section 164 of Bankruptcy (Scotland) Act 1856.

The duties incumbent on the Accountant may be summarised as follows :—

1. *Factor's Accounts, etc.*—(*a*) He receives the bond of caution of factor together with the inventory of the estate and documents instructing same.

(*b*) He names a day on which the factor's accounts close.

(*c*) He receives the factor's account of intromissions, with the vouchers and securities instructing same. After auditing such account, he issues a draft report calling for explanations within twenty days, and on the expiry of that time the report becomes final if objections are not lodged. The Accountant, in his audit, examines as to the validity of investments.

(*d*) The Accountant in his report fixes the factor's commission.

2. *Opinions and Reports by the Accountant.*—The factor, when he requires special powers, lodges with the Accountant a report detailing the circumstances of the case and his own views. The Accountant, on receipt of this report, appends his opinion, and the report and opinion are brought by note before the Court.

The Accountant, after satisfactory evidence has been produced to him in connection with petition for factor's discharge, issues a draft report for revisal. This report, when signed, is transmitted by the Accountant to the agent in the case.

The Accountant of Court lodges with the Court a report of all factories under his charge.

III. Trust Investments

By section 18 of the Judicial Factors (Scotland) Act 1889 (52 & 53 Vict. c. 39), it is provided " . . . that where a person deceased has left a settlement appointing trustees or other persons with power to manage his estate, it shall be competent for such trustees or other persons to apply to the Court of Session for an order on the Accountant to superintend their administration of the estate, in so far as it relates to the investment of the estate and the distribution thereof among the creditors of the deceased and the beneficiaries under the settlement, and the Court may grant such order accordingly; and if such order be granted, the Accountant shall annually examine and audit the accounts of such trustees or other persons, and at any time, if he thinks fit, he may report to the Court upon any question that may arise in the administration of the estate with regard to any of the foresaid matters, and obtain the directions of the Court thereupon."

In pursuance of this provision, the Accountant supervises the investments and audits the accounts of those trustees who have taken advantage of this section. The Accountant also reports annually to the trustees on the position of the trust and the investments, and observes whether or not the provisions in the trust settlement are being carried out.

It will also be observed that the Accountant may bring any matters before the Court upon which he wishes information, and this saves the necessity of laying a case before the Court in the ordinary way where trustees are acting without the Accountant's supervision.

IV. Consignations

In terms of the Court of Session Consignations (Scotland) Act 1895 (58 & 59 Vict. c. 19), the Accountant of Court is sole custodier of all consignations, and it is his duty to keep a register of these, which is open for inspection to all concerned.

The term "consignations" is defined by section 2 of said Act.

In addition to the above statutory duties, the Accountant of Court is employed by private persons to decide questions on accounting and other matters, the remuneration for which goes into the income of the Department.

Accountant-General.—The practice of delivering funds and effects of suitors into the charge of the High Court of Chancery originated at a very early date. For a considerable period prior to 1725 funds so delivered were deposited at the Bank of England in name either of the masters in ordinary or of the usher of the court to await judicial directions as to their disposal. In that year, by 12 Geo. I. c. 32, sec. 3, an accountant-general to manage such funds was appointed for the Court of Chancery; and in 1820, by 1 Geo. IV. c. 35, secs. 2 *et seq.*, an accountant-general with similar duties was appointed for the Court of Exchequer. On the institution in 1835 of the office of accountant in bankruptcy, the charge of monies lodged in bankruptcy proceedings was transferred from the Accountant-General of the Court of Chancery to the new official. The duties of the Accountant-General in Chancery were further considerably increased in 1847 by 10 & 11 Vict. c. 96, which enacted that trustees, executors, administrators, and other persons holding in trust monies in general, or annuities or stocks in the books of the Bank of England, the East India Company, or the South Sea Company, or Government or Parliamentary securities, should be at liberty by a simple procedure to pay such monies or transfer such annuities and other securities into the Bank of England to the account of the Accountant-General in Chancery to attend the orders of the Court.

By the Court of Chancery (Funds) Act 1872, 35 & 36 Vict. c. 44, secs. 4, 6, both Chancery and Exchequer offices were abolished, and the duties transferred to the Paymaster-General (cf. The Supreme Court of Judicature (Funds) Act 1883, 46 & 47 Vict. c. 29). By the Supreme Court Funds Rules 1894, number 104, the Paymaster is bound to discharge cheques of the late Accountant-General or any of his predecessors still remaining unpaid.

John R. M'Ilraith.

Accounting, Action of, is called, in Scotland, an action of "Count and Reckoning and Payment," and is the name given to an action by one party to compel another judicially to account with him and to pay the balance found due.

Such actions may be raised by a beneficiary or beneficiaries in a trust against the trustees, by one partner against another, or by a client against his agent.

The summons—(1) calls on the defender to produce a full statement of his accounts and intromissions, in order to discover the balance due; (2) calls on the defender to make payment of the said balance; (3) and it also concludes for a random sum as the supposed balance, in case defender fails to appear or render the statement.

In practice it is customary to remit to an accountant for a report, and this report may be sufficient to allow of the matter being settled.

Sometimes, however, proof may be led on the accounting.

The defences in such an action are (1) denial of liability to account; (2) averment that account has been settled.

Accounting in its Relation to Economics.—Without necessarily agreeing that there are "at least two sciences and five arts" (J. S. Mackenzie, *Introduction to Social Philosophy*) which claim the title of Economics, one is bound to take note of the fact that the boundaries of Economics are very ill-defined. The significance to be attached to the words Accountancy and Accounting is also much wanting in precision. Our conception of the relation of Accountancy to Economics will thus be largely influenced by our understanding of the nature and scope of the two subjects.

In the short space available for this article, it is proposed to restrict the main inquiry to an investigation of their relationship under the head of Value, and only incidentally touch upon other points of contact between Accountancy and Economics.

The general plan of the article implies a consideration of the following amongst other elemental questions:—(1) Does the theory of value as expounded by contemporary economic authorities correspond to the theoretical assumptions implicit in the mind of the working accountant? (2) If the explicit theory of the economist (*i.e.* his verbally formulated doctrine) does not correspond to, but falls short of, the implicit theory of the accountant (*i.e.* his working hypotheses unexpressed and largely unconscious), then how can the accountant help the economist to make their correspondence more exact? (3) If the economic does exactly correspond to the accounting theory, then what future developments may be looked for in regard to both? (4) If the economic includes and transcends the accounting theory, then should the accountant endeavour to make his own theory conform to that of the economist, and thereafter or simultaneously try to modify his practice in the same direction, and if so, how is he to do it? These questions, and particularly the last, imply a consideration of the further questions—(largely educational ones)—Should the accountant try to make explicit and fully conscious in his mind the economic theory that underlies his practice? And if so, what advantages may be expected to accrue (*a*) to the accountant individually; and (*b*) to the society in which he is a working unit?

It is not pretended that definitive answers to these questions are attainable in the present state of formulated knowledge. Still less is it contemplated to provide satisfactory answers—or even any solutions at all—in the present article. But the putting of specific problems in the foreground is a useful means of focussing attention, and so of setting up a goal for thought. What will be attempted in the following pages will be the suggestion of fruitful lines of research in a field which hitherto has been very slightly cultivated, and not at all systematically, with an indication of sources of relevant knowledge, and as far as possible its summarisation.

It is one of the historic instances of how wanting in philosophical perspective may be even the wisest among men, that John Stuart Mill should have introduced his discussion of value by saying, "Happily there is nothing in the laws of value which remains for the present or any future writer to clear up. The theory of the subject is complete." At the very time that this statement was appearing unmodified in edition after edition of Mill's *Principles of Political Economy*, certain obscure economists were trying to introduce new conceptions into the theory of value, which now that they have been recognised and are being developed, promise to effect profound modifications—even if they have not done so already—in that doctrine which the leading mid-century English economist affirmed to be finished and complete. "At first unnoticed, then for long but little thought of, worked out by men who for the most part did not know of each other, but yet agreed where so many had doubted and disagreed, came a new theory based on a new foundation." Thus in its origin the new theory of value was typical of the struggle with which most new ideas commence their career. As it is impossible to understand the working of a system without knowing something of its origin, so the essential features of the theory of value can only be grasped by tracing its development from the facts of experience and from the simpler ideas out of which it historically grew up by a process of gradually deepening analysis of those phenomena of the business world which the theory seeks to describe and explain. And first of all one must try to clearly realise what are these facts and processes of everyday business which the economist by means of his theory of value tries to make us comprehend in their hidden or half-disclosed bearings.

What are the practical tasks of everyday business out of which arise the theoretical problems of value? Consider, for instance, the question of income distribution—the apportionment of the national dividend amongst individuals and families. To produce the goods (using that word in the technical economic sense which covers commodities and services alike) which maintain and develop life, men co-operate with one another and with nature. In other words, the producing of goods is, in modern complex societies, all but universally a social or collective and not an individual process. The consuming or using of goods is, on the other hand, to a large extent a necessarily individual process. There are of course many goods, such as works of art, which can be "enjoyed" (*i.e.* "used" in the economic sense) by the public collectively; but by far the greater quantity of goods (including, of course, food and clothing), though collectively produced, must, by the very nature of man, be individually appropriated and used. Now, as a matter of observed fact, a certain amount of food, clothing, etc., does find its way into the hands of individuals for private ownership and use. This particular quantity of goods, for a given individual, we may, without any imputation of justice or injustice, call his economic share. In the course of ages, as societies have in one place and time grown in numbers, in complexity and in wealth, or in other places and times stagnated and decayed, the need for distributing amongst individuals their economic shares has in practice, of necessity, always worked itself out in greater or less degree of harmony with the general modes of life and thought in the given society at the time and place under consideration. Now if we concentrate attention—as most economists do—on western society, as it has been during the past few centuries and as it is to-day, we see that the actual distribution of economic shares amongst individuals has come to be effected in practice by an extremely complex set of arrangements constituting a piece of social

machinery which, though it works with much obvious friction and waste, yet works with a degree of efficiency which yields many excellent and even admirable results.

In practical life each person forms, with a greater or less degree of consciousness, an estimate of what he conceives to be his proper economic share, and seeks to secure it. In the interaction of these individual strivings, certain habits, customs, and laws are generated. These, regarded as a working system, may be said to constitute the social machinery by which the apportionment of economic shares is effected in practice. In regard to these habits, customs, and laws, we may ask among other questions —(1) What are they? (2) How do they work? (3) What is their origin and history? (4) In what relation do they stand to other human efforts and activities? (5) Whither do they tend? (6) In what way is it desirable to try and modify such tendencies? It is the business of a theory of value to answer these questions.

When an attempt is made to answer these questions it is soon found that a vast number of preliminary inquiries as to matters of fact, the use of words, the significance of events, the criteria of evidence, and so forth, have to be set on foot. Amongst these prior inquiries are questions as to the amount of income of persons or groups of persons (*e.g.*, a business corporation, family, nation, etc.) during a given period of time, and as to the relationship of the money or nominal income to the real income in commodities and services, the consumption of which determines the customary standard of well-being. If, as a preliminary matter of fact, we ask—What is the total nominal income as estimated in money of a given society during a given time? and—What is the real income in goods and services of that society during the same time?—we cannot get a direct answer for want of available statistics. Yet every producer in point of fact is more or less constantly engaged in estimating what amount of goods and services it may be worth his while to contribute to the general income. And the same person as consumer is also more or less continuously engaged in estimating what amount of commodities and services his means enable him to extract and use out of the social fund of commodities and services existent at a given moment. Now as every one is a consumer and most people are producers, it is clear that the whole adult population (however unconsciously) is giving its attention to the problem of estimating social production and consumption. Each family assumes in its daily action that the total social income during a given period will, when fractionally divided, yield sufficient to provide for the family's wants, according to standards estimated by experience of the past, and varied according to calculations of the future. In other words, the aggregate of families assume that their total income will reach a certain level. In short, consumers, as a whole, make periodical valuations of the social income. But this gross valuation is nowhere explicit, is nowhere numerically expressed as a total. It is only implicit, in the actions and conduct, in the speech and thought of individuals. But the same group of individuals looked at as a whole are also the producers; that is to say, they are the persons responsible for ensuring that the total social income does not fall short of the valuation which they themselves as consumers implicitly put on it. As individuals responsible for production they are, therefore, concerned to ascertain the limits of their own productive contributions to the total fund. This implies an attempt on the part of producers to interpret those signs of social valuation which are implicit in the actions of consumers. But it also implies an estimation of the means available for producing that part of

the social fund which the individual producer takes as the aim of his own business.

Arising out of the foregoing valuations, a certain scale of prices for commodities and services is seen, as a fact of experience, to emerge. These prices are of course what we call the current values of commodities and services expressed in money. Assuming certain limits of price, the consumer arranges the details of expenditure which express his standard of life. Assuming also a certain scale of prices, the producer determines the kind and quantities of products he is going to produce. Looking again at producers as a whole, we see that they have to calculate (1) the quantity of goods and services required during a given period, (2) the means available for the provision of these, (3) the manner of dealing with a possible excess or defect in production over the estimated quantity required. Here we have, therefore, stated in general terms from the point of view of valuation the problem of equilibrating the quantity of production and consumption in a given society. The fact that in the modern western world, life continues with as little economic disturbance as it does, shows that experience has taught men a considerable degree of proficiency in the art of equilibrating production and consumption. But the fact also of commercial crises recurring periodically, in the general form of economic disturbance throughout society, in the particular form of bankruptcies and liquidations in individual businesses, and in the disruption of families and the wreckage of individuals by severe or sudden depression of the standard of living—all these phenomena are for the most part describable as, in the first instance, errors of valuation, with inability to readjust incorrect valuations to new conditions without grave economic loss and waste of human life. Much, therefore, as has been achieved by practical experience in the equilibration of social demand and supply—in the harmonising of consumption and production—it is clear a great deal more remains to be done.

It is the aim of a theory of value to describe the means by which, in the course of long experience, practical men have learned to make their valuations, to elucidate the conditions and purposes of these valuations, and to suggest means for carrying to a higher degree of perfection the art of making them. In modern business the values of commodities and services are indicated by the money prices at which these are bought and sold. In a first superficial analysis, commercial values and money prices are thus interchangeable terms. The successful valuation is that estimate of price which is confirmed by the subsequent course of events. The comparison of estimates with the results is likely to be more or less accurate and exact in proportion to the fulness and accuracy of the record that is kept. The more perfectly the relevant facts and statements are recorded the more reliable will tend to be the inference drawn from the comparison of estimates and results, and the safer the guide thus derived for future valuations. The system of Accounting is historically the means which experience has devised for comparing anticipated with actual valuations. Accounting from this broad point of view is to be regarded as that specialised form of activity to which the private individual, the man of business, the family group, or the state government all have recourse in the record and computation of values. The treatment of values as money prices enables the accountant to apply to the analysis and synthesis of the highly complex phenomena of production and consumption those powerful instruments of thought which are called the rules of arithmetic—for values in becoming prices take on the form of arithmetical quantities. The aim of the accountant is thus to place at the disposal of all those responsible for

making valuations (and that is practically every adult) such means of perfecting their valuations as the mathematical sciences afford. But to be able to do this the accountant must be (1) sufficiently master of mathematical science, to select from its vast resources such instruments of thought as are best applicable to the analysis and synthesis of values: he must also (2) be adequately familiar with the economic phenomena with which these values are concerned. This implies on the part of the accountant a working acquaintance with the economy of business, the economy of family life, and the economy of the State. The mere fact that the accountant, like every one else, grows up in the world of domestic, business, and national life ensures of course a certain practical acquaintance with the ordering of the details of economic livelihood in all these spheres. But this does not ensure that systematic and disciplined grasp of these affairs which it is the aim of economic science to impart. The accountant should then be competent not only in mathematical but also in economic science. It is true it is usually stated in text-books that accounting is applied mathematics. But since, as observed above, the accountant must of necessity, consciously or unconsciously, systematise his economic phenomena before or coincidently with the application of mathematical resources to quantitative economic measurement, the contention seems unassailable that the science of Accountancy, wherever else it may find a position in the classification of knowledge, must also be considered as a branch of Applied Economics.

The essential contribution of mental effort directed to the measurement and registration of economic quantities is embodied and focussed in specialised forms of thinking which are called Accounts. The word economy in phrases like domestic economy, business economy, national economy has come into use to signify the systematic effort made continuously to economise action in the consumption and the production of wealth. And while the effort to economise action in the satisfaction of one's wants is at first instinctive, yet in the course of the history alike of the race and the individual, it tends to become more conscious, more rational, more directed to a preconceived ideal. In this progress from more or less blind instinctive economy of effort towards rationalised action consciously seeking ideal achievement —in the course of this material progress, the mental processes, the states of mind which alternately as effect and cause accompany it, undergo a corresponding transformation. Dimly-perceived mental states pass into ordered and systematic thought. The same impulse that compels to economy of action also compels to economy of thought. But as sensation and movement are united on the lower planes, so on the higher, thought and action are always found in combination co-operating in different degrees towards a common purpose. And as primitive striving to satisfy wants develops into an ordered practical art of economy, so coincidently with the growth of these later stages of concrete activity there is developed a corresponding way of thinking called theory or science. Hence corresponding to the Art of Economy we have the correlative Science of Economics.

The relation of the practice of economy in action as business, to the science or theory of these processes as economics, is to be deemed similar to the relationship subsisting between accounting in practice as a necessary part of modern business, and the theory or science of accounting considered in relation to economics. What, then, are the implications in saying that the science of accounting is a branch of applied economics? (Though the custom is scarcely more than incipient, and local only in its incipience, it might be well, at any rate it would save considerable repetition, to use the

word accountancy for the science or theory, and the word accounting for the practice or art of account-keeping.) If we say that accountancy is a branch of applied economics, we in the first place imply that accounting is a branch of business. Accounting being considered as a specialised occupation, the latter statement is of course obviously correct. But that is not the whole sense intended. If we consider business as the systematic endeavour to economise action in the use and provision of wealth, then business energy (except in its very simplest and most primitive manifestations) will always of necessity, and by reason of the very complexity of modern business, devote a portion of itself to account-keeping, because account-keeping itself is nothing but a device discovered and elaborated by racial experience for economising business energy.

The mere fact that so complex an art as is the most advanced accounting system of to-day, has in the course of centuries grown up out of the needs of business, attests a long series of interactions between doing and thinking. In the alternation and interweaving of thought and action which accompanies the continuous effort to adapt circumstances to human needs and needs to circumstances, a body of experience accumulates, and this stands in relation to the practical affairs with which it is correlated as theory to practice, and, when a certain degree of systematisation is reached, as science to art. The theory itself, in turn serving as a more rationalised basis for new experimental action, gives rise to the idea of applied science—this phrase, being used without sufficient discrimination both for the ensuing course of action (for which, however, consistency should reserve the title of art), and also for the scientific knowledge on which it is based. Thus in calling accountancy a branch of applied economics several different though not necessarily exclusive standpoints have to be kept in view. And in particular we have to remember that reference may be intended to that knowledge of economic principles which is implicit in the mind of the business man, or on the other hand to the more fully systematised science of economics which has been made explicit by professed scientists. How far accountants have, as a matter of fact, made principles borrowed from the science of economics serve as a ground of action is a question of history. How far they might do so is a question of policy.

It is well to try to realise as clearly and fully as possible what implications as to thought are conveyed by the statement that accountancy is applied economics. The main issue, however, is not with controversial contentions as to whether accountancy is or is not applied economics, nor whether it is applied economics or applied mathematics. The important question is as to what extent and degree have the resources of all other knowledge and experience been pressed into the service of account-keeping, and to what extent and degree are there untapped resources available for promoting the further progress of account-keeping. The onus or rather the privilege that rests upon the accountant is to exploit to the utmost for the benefit of his own special work the instruments of thought and action accumulated by all other workers, no matter in what field. But in the vast universe of human knowledge the accountant, even if he do not altogether lose his way, will inevitably waste much effort in futile attempts at discovery, unless his explorations are directed by expert guides. It is here where there arises an appropriate demand for the services of a group of investigators who would make it their special though not their sole occupation to cultivate the science as distinct from the practice of account-keeping. It has been noted above that progress lies in successive stimulations of theory by the needs of practice, and applications of theory to the

improvement of practice. In this series of interactions it is impossible to say where practice ends and theory begins. Progress is an unfolding web in which both are interwoven. It belongs to the very constitution of man that he is unable to demarcate thought from action. But it is equally an element of his constitution that he should deal with the complexities of life by a temporary isolation or abstraction of various elements, for he cannot otherwise in the perpetual flux of things give the necessary concentration of attention to detail. But on pain of either merely wasting the effort given to the temporary process of abstraction, or of incurring the worse danger of positive error, the various elements temporarily and provisionally isolated in thought must be brought together again, in order that the result of the thinking may serve as a basis for action.

Just as a certain crude theory of economics was implicit in the minds of practical men before the conscious elaboration of it by economists into a systematic body of thought or science,—so the theory or science corresponding to the practice of account-keeping has up to the present been for the most part implicit in the minds of practical men, but now requires corresponding elaboration and explicitness. As the development of account-keeping proceeds, there is bound to occur a similar subdivision of labour in accounting, by which specialists will cultivate that department which, for purposes of order and convenience, will be isolated as science. That this subdivision is already incipient and growing at a considerable pace is attested not only by the expanding efforts of the text-book writers to construct a systematic theory of their subject, but even more by the commencing recognition of the universities. One English and several American universities have up to the present year (1902) admitted the study of account-keeping to their list of professional and, therefore, presumably also cultural or semi-cultural studies. The merits of this line of advance are obvious. The peril to be avoided is the insidious tendency to isolation of the men of action and the men of thought into two separate and even hostile camps—a state of things that leads to the sterilisation and stereotyping of both science and art—a process which, if sufficiently protracted, means the negation and consequent decay of both.

It has been stated above that a first preliminary analysis identifies commercial values with prices. But every reflective man of business will recognise that a deeper analysis is required—that, in fact, there is an important element not only in values, but even in commercial values, which differentiate them from prices. It will probably be agreed that "price" does, as a matter of fact, tend more and more to be restricted in its use to expressing the money equivalent of the current market unit of a particular kind of commodity or service. To ask the price of pig-iron, of consols, or of dock labour means to ask the current quotation for a ton of pig-iron, for £100 nominal of consols, or for one hour of dock labour. On the other hand, it is a growing commercial usage to restrict the term value to the money equivalent not of a current market unit, but of some larger and less conventionalised unit—some stock or fund of varying dimensions, and regarded as a distinct totality by itself. Thus the value of a particular stock of iron would be the quantity of that stock multiplied by its current quoted price per unit. The value of a given investment in consols would be the quantity of nominal hundreds of stock multiplied by the current price. These growing tendencies to greater precision in commercial nomenclature, corresponding to improvements in the practical conduct of business, are examples of that double growth of more systematised thought or science and more ordered and disciplined action or art, which arises out

of the needs of everyday life, in obedience to the dictates of accumulated experience in which thought and action are not yet differentiated. The impulse to the extra initial trouble involved in more exact quantitative measurement and more definitive precision in language comes, of course, from the discovery which experience makes that this extra initial trouble is more than compensated by the greater economy made possible by the more orderly and systematic use of commodities and services in the present, and the greater certainty with which future wants can be estimated and provided for.

Past experience, which has ever been straining after increased exactitude of measurement and precision of nomenclature in business, is resumed and summarised in those two highly-specialised forms of thought—the Profit and Loss Account and the Balance Sheet. Here is to be found the highest expression of the empirical art of account-keeping, and implicit in the formulæ of these two accounts must be sought the most generalised expression of the ideas evolved by business men in the quantitative handling of business. It is here, then, and through these two most highly-developed accounting forms, that one might naturally expect a contact to be established between the theory of account-keeping and the special science of economics.

An examination of the profit and loss account and the balance sheet enables us to see how far practical experience has succeeded in measuring and defining the economic aspects of the realities of action corresponding to such elemental conceptions as wealth, value, capital, property, price, income, profits, interest, rent, wages, etc.—conceptions which, to be sure, are the very stuff of economic science. The balance sheet is a form for the summary of a series of inventories and valuations which are all supposed to be taken simultaneously at a given moment of time. Either by an effort of abstraction the processes of industry are momentarily arrested (or in some businesses where abstract thinking is not highly cultivated, by an actual stoppage of machinery and cessation of business), and the commercial world, or at least that part of it comprised in the business under consideration, is conceived as a stationary body at rest in all its parts. Under these static conditions exhaustive inventories of all the economic goods concerned are taken and their values computed. The accuracy with which this can be done will depend, amongst other things, on the perfection with which the goods can be classified and divided into units for comparison with other goods whose competition or co-operation conditions their value. The first aim, then, of the processes leading up to and culminating in the balance sheet is the classification of goods and the valuation of each of these classified groups or stocks. Where, as in nearly the whole range of wholesale trade in staples, experience has evolved a highly perfected system of classification of kinds of goods and grading of qualities, the valuation of the groups or stocks may be made by an almost mechanical reference to the current market price of the customary unit and the multiplication of this price expressed in money by the number of units in the stock. As we descend from the staples like wheat, iron, cotton, timber, etc., whose price is fixed in the great organised world markets down to the valuation of such difficult accounting quantities as, say, dilapidated machinery or goodwill, we encounter problems of valuation which are, speaking generally, difficult in proportion as experience has not succeeded in generically classifying and grading the goods to be valued and building up an organised market for their sale and purchase. The resources of the accountant are taxed to the utmost in those cases—and they constitute the great majority of his higher tasks—

where only a more or less remote indirect reference can be made to market prices. Valuations have to be made and put upon commodities in all stages of completion from raw materials to finished products, upon machinery at all stages of its life from the time when it is new till the time when it is "scrapped," upon buildings at any phase of their rise and decline, upon patents and copyrights at any moment of their fluctuating career. What is the response which the accountant makes as his particular contribution towards the solution of these problems and tasks of valuation? What are the means which accounting experience has devised for the solution of these practical problems of everyday life? To answer that question one must refer back to those preliminary accounts whose balances at various degrees of remove are carried forward to the final account or balance sheet. If the system of factory account-keeping which begins with the registration of attendance made by the timekeeper as the employees file past him on entering the factory, and which ends with the closing entries in the private ledger of the proprietor, be regarded as one single process, the aim of all this long process may be regarded as the provision of means whereby the proprietor of the business may ascertain what proportion of value in the finished products turned out by the factory has been contributed by the respective agents (generically spoken of as land, labour, and capital) concerned in the production. By the manufacturer these agents must be analysed with that degree of fulness and detail which his business instincts dictate as advisable; and to each of these elements he must be able to allocate its respective amount of contribution to the final value. Even when he works to order, the manufacturer either has to quote an estimate; or even if not asked for an estimate, he has to assign a due proportion of various general expenses to the cost of the order, for the sake of charging a fair price. In either case a clear analysis of contributory values is a necessity of successful business. But of course, in the great majority of instances, the manufacturer does not work to order, but on what might be called speculative account. In other words, it is true that the great mass of economic goods is produced more or less in advance of the needs of mankind. Thus the manufacturer has to face and provide against the contingency of the fluctuations in the value of his products, which the future may contain. Hence the burden rests upon him as a producer of utilising to the utmost such past experience as is available for an index and guide to the movement of values in general and of those of his special products in particular. For the manufacturer past experience as to the values of products is very largely stored and embodied in the value of the means and instruments which have produced these products. Hence the great importance to the producer of keeping an accurate record of the values of all his means and instruments of production and the changes which these values undergo in the course of time. Looking to the value of the finished products as the aim which is constantly before the producer, we see how it behoves him to anticipate these future values; and experience shows that the most effective way of doing so is to assume that in the growth of these future values the various factors or agents in production will contribute their respective shares in certain ascertainable proportions. The system of accounts is devised for the purpose of recording such facts as may enable the producer to test with the maximum of accuracy his various assumptions, and to modify them wherever experience dictates. The accountant is, as it were, the specialised eye-piece through which the producer sees how the value of his products is reflected back in detail all along the lines of production that diverge from the finished goods back towards

cost of raw material, price of labour, rent of land and buildings, interest on capital, and all the other items which are factors in price. The ideal which the accountant has to set before himself is the perfecting of the instruments of quantitative measurement by means of which the values of goods are—in Professor Smart's convenient phraseology—conducted back and distributed over all the various factors and agents which the most exhaustive business analysis of the day may consider as contributory agents in production.

Into what degree of detail it may be advisable to analyse the productive agents in a given business for the purpose of discovering their respective contributions of value must be determined by the particular requirements of the business as conceived and estimated by the managing authority; but in every case a limit will be set to the scope and extent of the analysis by the resources which the contemporary art of account-keeping is capable of affording. The more intimate the co-operation of the accountant and the manager, the further back will this limit be pushed—assuming the utmost capacity of business organisation and administration on the part of the manager, and a complete mastership of his art on the part of the accountant.

But in all productive business, whatever may be its speciality, there must always be an increasing tendency to emphasise and extend the analysis of cost. For do not changes in the methods of production, the improvement of old processes, and the invention of new ones all go on at an accelerating pace as industry more and more passes under the ordered dominion of applied science? In this ceaseless change the producer may at any moment be called upon to consider and decide as to the advisability of introducing some novelty in machinery, in labour, in power, in lighting, in heating, and what not. And if every such case is, as of course it ought to be, decided on grounds of scientific evidence, one of the first questions to be asked will be that addressed to the accountant—in regard to that item or factor which it is proposed to modify, what economic part did it play in the cost account; what was its particular contribution to the value of the commodity it helped to produce; and what is the estimated difference attributable to the proposed modification?

Here would be the place to introduce a consideration of the principles on which different managers and accountants rely in their calculation and allocation of fixed or relatively fixed charges, such as rent, interest, taxes, insurance, depreciation, and administrative expenses. In assigning a portion of these charges to the cost of a particular product, as also in calculating rates of dilapidation and depreciation, different accountants appeal to different economic principles; and though the slow growth of experience can alone be trusted to select the best methods, yet it would not be difficult to show that very considerable assistance could be derived by the practitioner from a knowledge of the relevant theoretical studies made by scientific economists. It would perhaps be not less easy to show that economists lose something by not paying more attention to the manner in which accountants handle these same phenomena.

But passing on to the consideration of the balance sheet as a summation of the values of productive agents and other economic factors concerned in a particular business, we have still to discover the significance and special interpretation which various elemental conceptions of economic science take on in the formulæ of the balance sheet. Take, for instance, the conceptions wealth, capital, and property; and see how the realities behind these terms are dealt with in the typical balance sheet. In regard to each of these

terms, the two questions are customarily asked, What is it? and What is it worth? The balance sheet answers the first question directly or indirectly by an inventory which enumerates particular kinds of goods. In simple cases each separate item in the inventory may be found specifically enumerated or symbolised in the balance sheet. In a more complex state of affairs classified groups of goods only will be indicated in the balance sheet, the detailed enumeration of the items composing these several groups being discoverable by reference to the auxiliary accounts which are resumed in the balance sheet. The list of assets in the balance sheet we may assume to indicate the quantity of the property, and the value of the assets measures the value of the property, whether or not the property be unencumbered. If there are claims on the property the value of these claims is measured by the amount of the liabilities, and the deduction of this amount from the value of the assets gives that proportion of the value of the property which would accrue to the proprietor on realisation. And this particular value is also the value of the capital as defined by the accounting formula—Assets – Liabilities = Capital. Here, then, is the answer to the question, What is the value of the particular capital at a given moment of time? But what is this capital? In what does it consist? The actual goods which correspond to this capital value will be found enumerated in the inventory of assets. But if we want to specify the particular goods whose value precisely corresponds to capital value, we shall be met in the great majority of cases with the difficulty that some of the goods are under lien for claims defined and summarised in the liabilities. Hence we are compelled to admit that no precise definition of capital goods is deducible from the formulæ of accounting—at least so far as the balance sheet is concerned. All the accountant can supply with exactitude is a measure of the value of capital goods. There would seem, however, to be implicit in the mind of the accountant, as a reflex from the tacit assumption of ordinary language and business, an idea that all the items included in the inventory of assets are to be considered as capital goods. On this view, then, all economic goods of whatever kind or of whatever degree of completion in existence at any given moment of time constitute capital; and the corresponding assumption would have to be made that the value of these specified goods is the value of the capital at that moment of time. But this particular conception of capital value is not necessarily coincident with, and, as we have seen above, would in the great majority of cases be different from, the specific capital item in the balance sheet. To reconcile the conflict between the two points of view, we have to imagine a distinction, implicit in the interpretation of the balance sheet, between the individual capital of a business conceived as the unencumbered property of the proprietor, and the social capital of the business, the latter including items of capital that may at the time be under lien.

The word Wealth has no technical use in the nomenclature of accounting. The popular question as to wealth is, How wealthy, or how rich, is a man? and the question is usually held as satisfactorily answered if either the amount of the income is given, or the amount of the capital value of his property after deduction of all claims against it—the latter measure being supplied by the balance sheet. One of the most recent noteworthy attempts of economic science to gain precision in the definition of its elemental concepts has resulted in the definition of capital as the stock of wealth in existence at a given moment of time; and this was held to be deducible from the usage of account-keeping. The argument on which it was based might be set forth and extended somewhat as follows. Assuming that every

owner of wealth in a community keeps accounts on the same double-entry system, and assuming that none of the wealth owned outside the community enters into these accounts, then if every balance sheet is drawn up at the same moment of time we shall have in the integration of these balance sheets a complete and exhaustive measure of the total capital wealth of the community at the given moment of time. Taking all accounts together, the total of liabilities cancels an equivalent amount of assets as between one individual and another; and it only remains to subtract the total of liabilities from the total value of the assets to arrive at the total value of the capital wealth of the community at the given moment of time. The same result would of course be reached by the direct summation of the specific valuation of capital in all the several balance sheets.

In this ideal integration of balance sheets for the hypothetical measurement of social capital, it will of course be understood that the accounts of legal corporations are neglected, since the property provisionally held by these is in ultimate analysis distributable amongst the individual shareholders. Alternatively, to be sure, the hypothetical case can be imagined in which all production of goods which are valued in money be undertaken wholly by legal corporations; and obviously in that case the amount of social capital at a given moment of time could be estimated by neglecting private accounts, and merely integrating the accounts of the legal corporations.

Practically speaking, such ideals in which private and individual accounting merges into social accounting, are doubtless highly hypothetical, but they need not on those grounds be deemed wanting in reality for science. Though here and there a possible direct stimulus to action, yet these speculative efforts of ordered thought find their chief use and justification in the development of scientific theory, and so serve as an indirect aid in the improvement of practice. The accountant whose scientific conceptions (that is to say, whose theoretical thinking) are limited to the immediate horizon of the few businesses or even groups of businesses with whose affairs he happens to be associated will certainly not adequately meet all the demands that will be made upon his powers. Only will he succeed in minimising the risk of error in the larger issues of his work if it is part of his habitual mental outfit to conceive of certain matters of cost and valuation as dependent upon ever-widening conditions, until it may be the whole process of world production has to be taken into practical consideration.

And here it may be remarked that the uses to the accountant of a training in economic science include, but do not stop short at, an endowment of systematised knowledge, and a facile access to sources of knowledge beyond the range of immediate acquisition. An adequate economic training eventuates in the development of higher powers which utilise positive knowledge merely as a tool. Economic education should be the organised means of equipping the accountant with a certain habit of mind, a certain way of handling economic phenomena, which, carried into practical business life, does not rest satisfied with superficial or customary views, but pushes on to ever-deepening analysis, which, again successively alternating with synthesis, gives at once the clearest attainable view of a situation in its detailed parts and in its widest totality. And if the acquired analytic habit of mind tends (as so often is the case) to the paralysing and not to the strengthening of the will, the defect is to be sought either in the native character of the student or in the incompleteness of his science; for it is the very end and purpose of science to prompt to appropriate action. To be

practical means to have a clear knowledge of what details may in action be omitted as irrelevant to the business in hand, and to know at what point to stop the investigation of causation, the search for operating factors. But it also means something more positive than this. If business is to be treated as an art based on its correlative science or group of sciences, then it must be held that theoretical study is inadequate if it stops short of providing not only a sanction for the main principles of action, but also a positive command for their performance. If the position be maintained, as is so commonly done to-day by economists, that economic science is merely descriptive and analytical, and terminates at the indicative mood, then it is a consequence of this doctrine that the study of economics, whether as training for business or for general culture, is incomplete, and that its necessary complement is such a study of ethics as would enable the student to pass from the sterile indicative to the fruitful imperative mood. It is only as a temporary device that economics can be isolated; for the scheme of labour subdivision by which a group of men make it their special occupation to search for greater economies of thought is in order that these, when discovered, may eventuate in corresponding economies of action. Thus the labour of science is wasted unless—it may be at many removes—it returns to and fulfils itself in practical art.

To return from this digressive educational note to the main theme—we have seen how the formulæ of accounting lend themselves to the interpretation of some of the elemental concepts of economic science. We have seen, at least, how by means of the economic knowledge resumed and epitomised in the balance sheet, a considerable degree of exactitude in the measurement of wealth, capital, and property may be reached, along with a corresponding increase of preciseness in the use of certain words that have not yet altogether lost their vagueness in the nomenclature of contemporary economic science. But these results were reached by positing the assumption of a stationary condition of business. It remains to be seen how the methods of accounting transcend the merely abstract static state, and deal with the phenomena of business as they actually are in movement. As the balance sheet is the typical document of what might be called static accounting, so the profit and loss account is the typical document of what might be called dynamic or kinetic accounting. If we treat the processes of industry as momentarily arrested, and proceed to take an inventory and valuation of all the economic goods (either the goods of the community as a whole or those pertaining to a particular business) in existence at the given point of time, we get the idea of wealth as capital, and capital is thus the total stock of wealth in existence at any given moment. If we turn now to the profit and loss account and all the preliminary accounts, more especially the cost records, which it resumes and summarises, we learn the history of the capital stock of goods during a given period. Their origin, their growth or decline in quantity and value, their distribution, and many of the details of their consumption or use are all recorded. Looking at this movement of goods as converging towards the proprietor of the business, we get the idea of income, and the measure of its value is the balance—if it happen to be a credit balance—of the profit and loss account. This balance of profit is, or should be, in the ordinary course of procedure, carried forward and added to the credit side of the balance sheet, an operation which involves the balance in a change of economic character. The items on the credit side of the balance sheet are grouped under the two headings liabilities and capital. If the credit balance of the profit and loss account be inserted amongst the liabili-

ties, we interpret that to signify the existence of the proprietor's personal claim on his own assets; personal, that is to say, as distinct from what might be called the social conception of the business, the idea being that the satisfaction of these personal claims will not impede the normal working of the business. Suppose, on the other hand, that the credit balance from the profit and loss account be added to the capital item of the balance sheet. That will be interpretable in various ways, in accordance with the manner in which the accounts have been kept and the intention of the proprietor. Assuming the accounts have been kept with this end in view, it will signify the amount of increase of capital during the period covered by the accounts, *i.e.* the rate of capital growth. Generalising this aspect of the matter, we get back to the commonplace statements that the aim of the balance sheet is to specify the quantity and to measure the value of the amount of the proprietor's wealth in existence at a point of time, and the aim of the profit and loss account to measure the rate of its increase or decrease.

Passing on to the integration of individual accounts, we deduce the proposition in regard to the social body that capital and income are, as in the case of individuals, not to be considered as two kinds or classes of wealth, but are merely two aspects or forms of wealth in time. Capital would thus, as already noted, comprise all wealth in existence at a moment of time, and income would refer to the flow of wealth during a period of time. From the standpoint of the balance sheet—the static or capital point of view—wealth is a stock of goods. From the standpoint of the profit and loss account—the dynamic or income point of view—wealth is a flow of goods.

Supplementing his study of facts by an effort of economic imagination, the accountant reaches the useful conceptions of Social Capital and Social Income as an integrated resultant of competing and co-operating individual production. By a similar effort of speculative reason the accountant may acquire helpful ideas as to the distribution and the consumption or use of social wealth considered under its two aspects of social capital and social income. The profit and loss account was above considered as resuming a body of accounts which recorded changes in and movements of goods converging towards the production of an income for the proprietor. But there are many people interested in a business of the ordinary kind, and it may be a great number and variety of persons who look to it for the provision of an income or part of an income as well as the proprietor. What is the position of all these dependent persons in the system of accounts? Looked at as a whole, these other or non-proprietorial incomes derivable from the business are, of course, part of the expenses or cost of production, and are summarised and represented on the debit side of the profit and loss account.

Since every money payment is at once part of the gross receipts of some income-receiver and part of the gross expenditure of some one else, it is clear that confusion in economic analysis may readily arise from failure to constantly discriminate the debit and credit aspects of the same item. In the consideration of price phenomena, failure to invariably distinguish the income from the expenditure aspects of price doubtless accounts for not a little of the discrepancy in the economic analysis of price. The importance of price in the problems of distribution is derived from the fact that the social dividend is distributed amongst families and individuals by valuation processes expressed in price from the twofold standpoint of income and expenditure.

The grouping of items on the debit side of profit and loss might be as follows:—(1) rent, (2) interest, (3) wages, salaries, and other payments for personal service, (4) upkeep, including insurance, (5) taxes. The traditional

economic classification of incomes is clearly based upon the same popular preconceptions as those that have determined the grouping of these debit entries. On the credit side there may be a great variety of entries, as determined by the special scope and character of the business. In the case of an extractive industry where the proprietor owned none of the capitalisable instruments of production, the credit items might simply be the sales of produce entered at their selling prices. In a similar case of manufacturing industry the entries would represent price of goods sold, less cost of raw material. In the former case we might deduce from the profit and loss account the formula

Selling Price of Commodities = Rent + Wages + Interest + Upkeep + Taxes + Profit.

In the latter case the corresponding formula would be

Price = Cost of raw material + Interest + Upkeep + Taxes + Profit.

In the case of an agriculturalist owning his own land and implements, and farming on the margin of cultivation, only just paying his way, the formula would be

Price = Wages + Upkeep + Taxes.

By considering other typical cases of profit and loss accounts we might deduce other variations on the formula. All these have to be compared, interpreted, and generalised by the aid of economic principles. But when we turn to the corresponding economic analysis we find a no less bewildering number of rival generalisations—some of which might be expressed in the following formulæ—by no means an exhaustive list:—

Price = Rent + Wages + Interest.
= Interest + Wages.
= Rent + Interest + Wages + Profits.
= Interest + Wages + Profits.
= Wages + Profits.

The two radical obstacles that handicap economists in their studies in general, and perhaps in the study of distribution in particular, are deficiencies in the collection and classification of relevant facts, and ambiguities in terminology. From the above broadly outlined suggestion of quantitative relationship subsisting between the accounting problems of profit and loss and some of the main economic problems of distribution, the accountant is intended to draw the inference that with him rests very largely the duty of leading the way in the introduction of more exact measurement of quantities and more precise use of language in actual business, and also of supplying, for the use of economists, statistical evidence as to the actual facts—the what, where, and how—of wealth distribution and use.

But without some conception of the principles involved—without some clear knowledge of the case that is being tried and the issues at stake—the accountant is not equipped with the means of searching for and selecting evidence that is appropriate for the economist. It is one of the main uses of theoretical studies to teach the practising accountant to see and detect in the mass of facts and figures that are perpetually passing through his hands, which of them have relevance to the issues of contemporary science. Occupying a middle position between practical business and the corresponding theoretical science of economics, the accountant has continuous opportunities of selecting and transferring from one side to the other that which is lacking to complete and perfect the union and synthesis of theoretic

science and practical art. Economic science is ever in need of the facts of experience derived from business; and business is ever in need of the aid of science for the ordering and interpretation of its facts, for making explicit the principles which in action are implicit, and so of defining and elevating its ideals. It is true, that there is always a possibility of overtraining in abstract thought leading to paralysis in action, just as there is the danger of over-absorption in action producing decay of the reflective powers. But there is no doubt that if the balance is held fairly even between theoretical studies and practical work, an organic educative ferment is set up which goes on throughout life, and moreover with cumulative effect, up to and perhaps beyond the onset of old age, ever increasing the range and intensity of real power (real, as opposed to mere manipulative, dexterity in using the symbols of power); and this in both the practical and theoretical sphere.

From this cultural point of view the accountant is exceptionally advantageously situated. It is scarcely open to doubt that a very high cultural level will be reached by the profession when facilities are organised for the education of its members—incipient and actual—in all the relevant sciences. But what are the relevant sciences? To say that accountancy is applied mathematics or is applied economics or is both, advances the question only one stage forward. The problem is—what mathematics does the accountant apply, and what might he apply if he had a complete command of mathematical resources? The same is true for economics, and likewise in diminishing degree for each of the other specialist sciences as they may be conceived as receding in distance towards the outer margin in a classification of knowledge which for practical purposes places accountancy in its centre and focus. These questions, for answers even approximately satisfactory, await judicious educational experiment; and this will be likely to yield profitable results in proportion to the fullness and harmony with which the three groups, so generally disunited, associate themselves in devising and organising these experiments. The three groups of authorities are:—the Educationists (who as representing philosophy and therefore the interests of society as a whole come first), the Practitioners, and the Economists.

In a scheme of professional training for accounting, as for other specialised occupations, the use of theory is not only to provide principles of occupational action—a scientific ground-plan of professional conduct—but also to provide a corrective for the illusions of specialism. The theory or science corresponding to a given art not only provides technical sanctions for practical rules, but also discloses the relationship of the art and its practitioner to the rest of the world. It is a proof of inadequacy and unsoundness if its theory does not tend to correct the bias of social narrowness and selfishness which is a customary outgrowth of specialised occupation. Of all those who—not even excluding the banker—have to do with the practical handling of commercial values the accountant deals with these values in the most highly generalised form. He presumably then should be able to profit most by such cultural worth as may reside in any theory of value which economists may have been able to formulate.

The Theory of Value

In the sense in which the theory of gravitation describes with such precision the movement of the heavenly bodies as to enable the theorist to predict future movements with exactitude—in this sense there is no theory of value. Yet a series of constructive efforts towards a relatively precise theory have been made by a line of great economic thinkers. They did

not, however, at first address themselves so directly and persistently as have their more recent successors to those preliminary inquiries as to the actual facts of the business world which correspond to the words value, price, wages, interest, profit, rent, etc. It is sometimes contended that not till quite recently did economists learn how to scientifically formulate their problems: indeed others contend that they have scarcely done so even yet—thus illustrating, what seems to be invariable in the history of science, that the mere statement of a problem is one of the hardest tasks to which the human mind can be set, and that it is only possible to advance to a solution of a problem by prolonged and laborious attempts to set forth with increasing clearness and precision all the questions we can state with regard to it.

Recognising the immense complexity of the machinery of distribution in modern societies, and the consequent difficulties of analysing it, the founders of economics usually drew upon their conceptions of earlier and simpler forms of society; and professing to discover there the principles of value, they proceeded forthwith to apply these principles to the interpretation of contemporary society.

The favourite recourse was to the imaginary hunter, whose life alternates between periods of arduous exertion in the pursuit of game for food and periods of protracted idleness succeeding excessive alimentary repletion. The wants of this conventional hunter are few; and of these the early economists thought only of hunger. The pangs of hunger are intermittent; and assuming no other stimulus to activity, it is manifest that in balancing the toils and risk of the chase (*i.e.* production) against the satisfaction of hunger (*i.e.* consumption), the hunter will decide to produce not continuously, but only occasionally, and on those occasions when the demands of appetite are imperatively urgent. Thus in the economy of the imaginary hunter production and consumption will appear as two relatively distinct processes. And production being associated with toilsome effort (the "pain of labour" being intensified by "working on an empty stomach"), the idea may be expected to grow up in the hunting mind of measuring the cost of production by the degree of painful labour involved in the process. In the cost of food and shelter, then, the element of labour will be the important factor. The degree of labour—measured in time or in intensity if that be possible—will readily be accepted by the man who has to supply the labour as the true measure both of the cost of production and of the value of the product.

In the peasant as in the hunting economy, and in fact wherever the necessaries of life have to be obtained by laborious personal effort, there must always be a tendency in the valuation of these necessaries to put the emphasis on the amount or degree of energy that has been directly or indirectly employed in their production. The generalisation of this point of view is the conception that cost of production is the determinant factor in the typical process of economic valuation; and in seeking for a measure of value we are thus directed to the side of production rather than the side of consumption. The further continuation of the generalised argument might be conceived as proceeding as follows. What factor or combination of factors engaged in production can be most readily or appropriately laid hold of and made to serve for the measure of value? Early attempts to develop and make precise the idea of measurement necessarily implied reference to a physical standard. From the physical or objective point of view the two ultimate factors in production are the energy of human labour and the energy and material of nature. Leaving the prematurely abstract standpoint and looking at the question historically and empirically, we should

ask, Which of these two factors, or what combination of them, have in actual experience been used as a measure of value in hunting, peasant, and other similar economies? But reverting to the above abstract point of view, we may make the observation that in the last resort the energy and material of nature cost a given society (considered as a whole) just the labour of seizure and the labour of manipulation, and then deduce the inference that our analysis leaves human labour as the ultimate source from which a measure of value is to be taken. Here we have the point of departure of the doctrine of value built up by the classical economists. "Labour" (in the oft-quoted words of Adam Smith) ". . . is the real measure of the exchangeable value of all commodities. The real price of everything, what everything really costs to the man who wants to acquire it, is the toil and trouble of acquiring it. What everything is really worth to the man who has acquired it, and who wants to dispose of it or exchange it for something else, is the toil and trouble which it can save to himself, and which it can impose upon other people. What is bought with money or with goods is purchased by labour as much as what we acquire by the toil of our own body. That money or those goods indeed save us the toil. They contain the value of a certain quantity of labour which we exchange for what is supposed at the time to contain the value of an equal quantity. Labour was the first price, the original purchase money, that was paid for all things."

The fundamental position of the classical doctrine of value is, it has been contended above, reached by generalising a certain truth observable (by somewhat abstract study of primitive societies) to hold in simple economies like that of the hunter and the peasant, where necessaries are assumed to constitute the bulk of wealth, and where in the provision of these necessaries almost every adult will directly share the labour of the struggle with nature.

But we may approach the subject from many different points of view, and arrive at varying conceptions of economic importance, and therefore also of value. For concrete values are ways of expressing ideas of economic importance. In order to get rid at least of some of the ambiguities attaching to the word "value," some economic writers propose to substitute for it the word "importance," leaving the qualifying adjective "economic" to be implicitly assumed. It is a merit of this suggestion that the use of the word "importance" at once prompts the inquiries—Important as judged by what criteria?—for whom?—and as tending towards what ideal of individual personality or social aim? These are questions which it is in any case easy to forget to ask in regard to currently accepted valuations—and the easier the more the ethical element in value tends to be merged in the commercial.

In a society like that of the modern western world, where the division of labour has been carried to such an extent that the process of bargaining all but universally intervenes between the production and consumption of goods, and where moreover a large (perhaps the greater) proportion of wealth consists of comforts and luxuries or the means of producing these—under such conditions a certain set of ideas will grow up in regard to what constitutes and adjudicates economic importance. These ideas and their materialisation in convention, in custom, and in law, whatever they may be, will, we are safe in assuming, be largely different even in principle from the analogous phenomena in those simple societies from a consideration of which the founders of economics generalised some of their main principles. As Wieser aptly remarks, "there is more behind the mysteries of

commercial book-keeping than may be dreamed of in the philosophy of the hunter."

Starting with the analysis of the phenomena of valuation in the modern western world, certain economists have taken their point of departure for the construction of a theory of value in the observed fact that people do actually attach degrees of economic importance to goods in proportion to the kinds and degrees of use which goods can render directly or indirectly, or which people imagine the goods can render. The fact that people do adjudicate different degrees of importance to different commodities and services—in other words, the fact that people do make valuations—is the point from which the researches of this school of economists start. The distinction claimed by the founders of the school is that they start on their researches without hypothetical preconceptions—*i.e.* without a bias in favour of any particular economic hypothesis, without, so to speak, any theoretical axe to grind—and equipped only with the methodological apparatus of scientific research and the positive acquisitions of their economic predecessors. Their scheme of study implies an analysis of all the different kinds of valuation which are made in the business world, this analysis being intended to lead to the discovery of the essential types, their relative significance, and the economic mechanisms by which these typical valuations manifest themselves. Finally, this method culminates in a synthesis which not only professes to describe precisely how the various valuing processes do as a matter of experience integrate themselves into a working system; it also claims the merit of having resumed and summarised all the mass of empirical facts immediately concerned in valuation processes into a few brief formulæ or laws of value. From some of its originators and leading exponents—many of whom have been Austrians, hence the common designation of the school as Austrian—sentences could be quoted to show a deliberate attempt to make their theory merely an explicit statement of the principles that are implicit in the accounting department, whether of a business or of a household. The following citations must suffice to support this contention:—

"Now, if the problem [of determining the inter-relations of wages, profits, interest, and rent] be but rightly put, that is, if we wish to separate the economic and not the physical shares, the problem becomes soluble. It is actually solved in practice in all rational enterprises by every agriculturist or manufacturer, and theory has nothing to do but rightly and carefully to hold the mirror up to practice in order in turn to find the theoretical solution" (Böhm-Bawerk, *Annals of American Academy of Political and Social Science*, vol. i. p. 375). "Any layman in economics knows the whole substance of the theory of value from his own experience, and is a layman only in so far as he does not grasp the matter theoretically, *i.e.* independently, and for and by itself, but only practically—that is to say, in some given situation, and in connection with its working out in that situation. . . . The only true theory of the estimate we call 'value' will be that to which practical life gives its entire assent. Only, of course, the judge must first himself be educated. He has to judge whether he recognises himself in a description which informs him about his own life and being, and which he himself is incapable of giving" (Wieser, *Natural Value*, pp. 5-6). "Every practical employer is constantly intent on arriving at a clear statement of his cost account, including capital. . . . Let him try to inform himself about the meaning and significance of his calculations by reading theoretical works on value. What a surprise it will be to him not to find any information about these operations. . . . At first he may perhaps be in doubt whether his calculations are without sense, or the theory without use,

but soon he will decide that the latter is the case" (Wieser, *An. Am. Acad.* ii. 609-10). "The actual calculation of the economic world constitutes an unsurpassable work of art in which nothing is isolated or unconnected, and it is not completely grasped by theory so long as anything in it seems to be without connection with the other portions of the system" (Wieser, *An. Am. Acad.* ii. 623). "Without the art of imputation [*i.e.* the power of calculating the economic contributions made to a given product by the various productive agents concerned in its production] there would be no business calculations, no economic method, no economy, just as without the system of criminal charge there would be no society. Fortunately the practice of it is universal, every one, be he ever so stupid and inexperienced, applying it, though with varying degrees of acuteness. These rules of economic imputation as used in practical life the Austrian school has endeavoured to connect by way of theory" (Wieser, *Economic Journal*, i. 111).

Here, then, in the economic doctrine of the Austrian economists and their followers, if anywhere, we should expect to find at least the beginnings of a science which accountants might claim as their own, and formally establish as the theoretical foundation of their art. It constitutes a bond of union with the art of account-keeping, that the chief advance made by the Austrian theory of value upon its predecessors lies in the greater precision that is possible in passing from a qualitative to a quantitative analysis of the phenomena of valuation. The four groups which universal agreement admits to be concerned in the valuation of a particular economic good are:—

1. On the physical plane—
   (*a*) The kind and quantity of energy and matter used up or embodied in the particular economic good.
   (*b*) The physical results ensuing to the individual or community using or consuming the goods.
2. On the psychical plane—
   (*a*) The conscious feelings accompanying the art of production (usually thought of as a "painful effort").
   (*b*) The conscious feelings accompanying the act of use or consumption (usually thought of as satisfaction or pleasure).

All these are admittedly factors in the valuation process, and the phenomenon is still further complicated by the fact that each element may (and indeed in an exhaustive analysis must) be regarded from two points of view—(1) that of the individual, and (2) that of society. Relegating to a place of secondary importance the physical factors, the Austrian economists have concentrated their attention on the quantitative analysis of the psychical factors; and hence the contention sometimes advanced that economics, though standing to business as pure science, yet stands to psychology as applied science.

Of the large generalisations which, under the name of the laws of value, have been made from this psychological point of view, the earliest in time and the most fundamental is commonly called (in Continental though not always in English manuals) Gossen's Law, after the name of the German writer who formulated it in a book published in 1854. Believing that he had made a discovery as revolutionary as that of Kepler in astronomy, the author anticipated a similar transformation in economic science. His book, however, lay unnoticed and neglected until the same generalisation was, about half a generation later, almost simultaneously formulated as a result of independent and, as it was thought, original research by Jevons in England, by Menger in Austria, and by Walras in Switzerland—an incident which

must always remain one of the remarkable coincidences in the history of human thought.

The facts of experience which in the statement called Gossen's Law are gathered together, generalised, and formulated as a principle of economic conduct are facts of common everyday action familiar to all in practice but not easy to grasp in thought. That there is a purely emotional element in the valuation process every one instinctively recognises from his experience; but the question does not readily arise as to the quantitative part which the emotional element plays. Gossen pointed out that if we analyse those cases where goods are used in observable units—as, for instance, loaves of bread—then, at a given time and place, in the consumption by a given person of a number of units (loaves), the feeling of satisfaction diminishes with each unit (loaf) consumed, and a point may be reached at which there is no satisfaction at all; and again, beyond this, the continuance of consumption would be accompanied by dissatisfaction. Thus if we assume that the desire for goods is always proportionate to the satisfaction derived from their use, we see how the desire for a particular good, or, as we may say, the desiredness of that good, may to a given individual vary from the point where he would give his life for it down to the point where he would give his life to get rid of it (thus varying from plus infinity through zero to minus infinity). The word "utility," used with vagueness by the older economists, has through the more searching analysis of the psychological school received a more precise definition, and has come into use as a technical term for that sort of desiredness of goods which under given circumstances varies directly with the given quantity estimated in particular units.

Experience shows that each person is more or less continuously engaged in constructing for himself scales of utility in regard to particular goods at particular times. The estimate formed by individuals of the economic importance of commodities and services is quantitatively expressed by the place in which these are put in the scale of utility. In other words, each individual has at his command some system of graduated measurement for effecting the process of valuation. Growing up from generation to generation, for the most part in unconscious response to the dictates of experience, this graduated system of measuring values has in modern western civilisation become integrated and embodied in the complex social phenomena of money prices. To say in popular language that a person knows the value of money is interpretable as meaning various things, but this chiefly—that his various scales of utilities are graduated in accordance with standards which the speaker conceives to be both individually and socially appropriate under the circumstances. There can be no doubt that in the mind of every adult normal individual brought up under a money economy there gradually grows up the power of conceiving and applying through the agency of money two mutually interacting graduated systems of measuring and adjudicating degrees of economic importance—the one individual, the other social. It is the leading merit of the psychological school of economists that they have advanced beyond others in describing with greater precision and generality the working of these two systems of valuation—tracing out with greater detail and clearness than has been done before their infinite ramifications and interactions in the world of business, and presenting by the help of the economic analysis and its co-ordinate synthesis a more clear and vivid picture than was obtainable before of the part which these systems of valuation play in the moving mechanism of economic life.

The idea being grasped that the economic conception of a series of measurements of utilities, individual and social, integrating themselves into the current system of price valuations, is nothing but the generalised thought-equivalent of a developing process in concrete action, then the next inquiry of scientific thought naturally directs itself to searching for the principles which in practice determine the graduation of the scales of utilities. A specific generalisation of facts under this head is part of Gossen's law. Gossen observed that where goods are consumed in a series of units, then a particular importance is, as a matter of verifiable fact, attached by the consumer to the last unit that is actually consumed or acquired in the time under consideration. This importance of the last unit actually used or acquired is emphasised by all the four independent discoverers of the generalisation known as Gossen's law, under a series of phrases, each of which has its own special significance. Gossen's phrase is "value of the last atom"; that of Jevons, "final or terminal utility"; that of Walras, "intensity of the last want satisfied," and though Menger did not use any particular phrase, yet Wieser, one of his Austrian successors, made use of the phrase "marginal utility," and this particular form of nomenclature has since come into general use as part of the recognised technical vocabulary of economic science. In order to realise the significance of the facts of experience covered by these historic phrases, one may put to oneself such questions as these: What is it that determines a family in the apportionment of its income over the several items that compose the family budget? Why is it that so much money, and no more or less, is spent on loaves of bread, so much on meat, clothing, shelter, etc.?—or in more particular case, What sort of mental balancing is it that determines a man to stop his smoking for the day at the (say) third rather than the second or fourth pipe? Neglecting in the analysis all other considerations than those of the pure psychology of the feelings, one sees how individuals direct their efforts to providing the means of satisfying a given want up to a certain point, and then pass on to the acquisition of means for satisfying other wants. Now taking a person with given scales of utilities for particular goods applied to the satisfaction of particular wants, we shall gain something in precision if we dominate as the *marginal* point the actual place on each scale of utilities where the process of satisfying the particular want is broken off and terminated. If then we put together all the different scales of utilities of the given person covering a given period, with their marginal points marked on them, we should have a record of that man's scheme of adjudicating the economic importance of the different commodities and services which his income over the given time enabled him to command. Now that is a process of valuation which every individual is more or less continuously engaged upon. The economic result is what we call the standard of comfort, or—taking the widest view—the standard of living. The psychological analysis interprets it, as the result of the efforts which the individual makes to fix the marginal point on each of his scales of utility, in such a way that each one of his wants shall during the given period receive that degree of satisfaction which is proportional to the urgency of the want. The individual is conceived as circumscribing himself by a waving line which crosses each of his scales of utility at that marginal point where the process of satisfying the particular want is terminated, in consequence of his determining that any further satisfaction of this particular want would deprive him of the means of satisfying other wants which he conceives to be appropriate to his customary scheme of life. By a series of continuous experiments in the expenditure of income

each individual and each communitary group (family, nation, etc.) are from this point of view regarded as engaged in never-ending attempts to graduate and re-graduate their respective scales of utilities, always seeking to utilise past experience for the minimising of efforts and the maximising of satisfaction, and it is clear that the more full and accurate the record of experience which is embodied in the various valuation processes, the wider and safer will be the basis afforded for the guidance of future action. Without elaborating the point, it must suffice to bring the Austrian or psychological theory of value into contact with accounting by suggesting the conception of account-keeping as the systematised record of past experience in the graduation of the scales of marginal utility in general, and in particular as the record of the efforts to determine the points of marginal consumption—the whole scheme of accounting having its main objective in serving as the quantitative test of economy in action. The theory of account-keeping would thus be brought into contact not only with those physical, organic, and social sciences which are concerned with providing and organising the resources of life, but also with the moral sciences which are concerned with the criticism of life, and even with that philosophy which generalises all the several sciences. It is just here where problems of accounting might be considered as passing over into problems of auditing. The controversies as to the scope and limit of the duties and powers of auditors which have arisen in practice are a reflex of those facts of experience by which accounting as an art is brought into contact with other arts which have their respective theories in the moral sciences.

Having disclosed what its exponents believed to be the essential psychological mechanism by which in the valuation process the relationship of goods to wants is determined and measured, the theory of value, one might expect, would pass on to the problem of the scientific analysis, classification, and explanation (1) of wants, (2) of goods, and (3) of the various orders of determinant factors. But of these problems the first two have been handled only in the most general and abstract way, and in regard to the third, little or no attempt seems to have been made by economists to pass from an analysis of proximate factors to an exhaustive classification, leading to a doctrine in which the resources of the other sciences would be fully utilised. The economic assumption appears to be that these problems as specific objects of scientific research should be left to the specialists of other sciences. The classification of goods, for instance, might presumably be handed over to (say) the scientific accountant or the sociologist, or possibly the hygienist; the classification of wants to the psychologist, or the educationist, or the ethicist, or the sociologist. But in point of fact none of the various groups of specialists appears eager to accept as part of their necessary obligations the specific tasks thrust upon them. If they have attacked the problems at all, it is (speaking of the specialists collectively and not individually) with popular or recondite preconceptions rather than scientific ones.

The theory of value itself passes on from its analysis of personal or subjective valuation in consumption to a similar psychological analysis of the apparent facts of distribution (including under that term the phenomena of exchange). Here the two main problems are treated —at least by the Austrian school—as phenomena of valuation. The nature of these two problems has been suggested rather than stated in the previous pages. More precisely, the problems might be formulated as follows:—(1) the problem of what is called Functional Distribution—the discovery of the respective economic (not physical) contributions made to

the total produce of industry by the three functional factors in production, and the method of assignment to each of the three factors of their respective shares; the three productive factors being assumed to be (*a*) Land (*i.e.* natural agents); (*b*) Capital (*i.e.* natural agents modified by human action); (*c*) Labour (*i.e.* human agents considered collectively: (2) the problem of what is called Personal Distribution—the assignment to individuals or groups of individuals of their respective economic shares; this problem being treated under the two aspects (*a*) Analysis of the actual distribution of income as it is effected in experience; (*b*) Constructive criticism of the existing system from the standpoints of the normative sciences, and from some standpoint that unifies these.

The researches of economists under the above heads have not resulted in any grand generalisations which, like Gossen's law, are universally accepted as resuming all the relevant facts of experience. But the application of those quantitative ideas which are commonly spoken of as the marginal method of analysis has yielded many valuable incidental contributions towards a scientific theory, and these have been expressed in numerous thought-economising formulæ, which, however, cannot be considered here, though accountants would do well to master them for the sake of the extra power they might thereby acquire both in the framing and in the interpretation of accounts. Sources of information in regard to these are indicated in the bibliography appended to this article.

VICTOR V. BRANFORD.

LITERATURE.—**Accounting in its Relation to Economics.**—There does not seem to be any body of writing specifically devoted to this question. In the great German encyclopædia of economics, *Handwörterbuch der Staatswissenschaften* (edition of 1890-97), the article under the heading Book-keeping (Buchführung) is technical and historical merely. In the corresponding but smaller English work, Palgrave's *Dictionary of Political Economy*, 3 vols. 1894-99, there is no article under the heading Accounting, and that on "Book-keeping" is written exclusively from the technical standpoint, and contains no attempt to correlate the theory of the subject with the principles of economics. The same is true of the otherwise systematic and scholarly article "Comptabilité," by Leautey, in Yves Guyot's *Dictionnaire de Commerce et de l'Industrie*, 2 vols. 1895-1901. The article "Comptabilité," by Leon Say, in the *Dictionnaire Nouveau d'Economie Politique*, 2 vols. 1891-92, is general and historic rather than economic. Many Italian works on accounting are prefaced by an economic introduction, but these appear to be either reiteration of general economic doctrine or a restatement of somewhat arbitrarily selected economic principles. Amongst general treatises on economics, Professor Marshall's *Principles of Economics*, vol. i. 4th ed. pp. xxix. + 820 (Macmillan, 1898), which is the leading text-book for English-speaking students on both sides of the Atlantic, has probably more of the "business" point of view than any other. Professor Hewins, in the article "Economics" in the new issue of the *Encyclopædia Britannica*, emphatically urges the greater attention of professed economists to the needs and requirements of practical men—whether in business, in politics, or in civics. Of specialist works dealing with particular departments of economics, the following may be cited as touching more or less directly the theory of accounting—(1) IRVING FISHER, "What is Capital?" *Economic Journal*, 1896; and "Senses of Capital," *Economic Journal*, 1897; (2) WIESER, *Natural Value;* (3) WICKSTEED, *Alphabet of Economic Science*. From the accountant's side an attempt is made to co-ordinate the theory of accounting with that of economics in two articles "On the Correlation of Economics and Accountancy," in *The Accountant* of 25th May and 1st June 1901, by V. BRANFORD.

Value.—1. PRACTICAL PROBLEMS.—(*a*) *Measurement of Value.*—1. W. S. JEVONS. *Money and the Mechanism of Exchange*, pp. xviii. + 345. Kegan Paul, 1875.—2. J. S. NICHOLSON. *A Treatise on Money*, pp. xviii. + 431, 3rd ed. Black, 1895—especially Part II. chap. i. (Function of Money), and Part II. chap. vii. (The Measurement of Variations in the Value of the Monetary Standard); and *Bankers' Money: a Supplement to a Treatise on Money.* Black, 1902.—3. "Report of Committee on methods of Ascertaining and Measuring Variations in the Value of the Monetary Standard" *Reports of British Association*, 1887, 1888, 1889.—4. Articles "Money," "Value," "Price," etc., in Palgrave's *Dictionary of Political Economy.* From the bibliographies appended to these articles reference can be had to foreign works and to the history of valuation standards and systems.

(*b*) *Social Wealth and its Distribution.*—1. W. SMART. *The Distribution of Income*, pp. xv. + 341. Macmillan; 1899. (Illustrates theoretical issues by concrete instances taken from the

actual figures estimated for contemporary social income of Great Britain and its distribution amongst classes of the community.)—2. P. B. SPAHR. *The Present Distribution of Wealth in the United States*, pp. 184. New York: Crewell and Co., 1896. (Historical, analytical, and statistical: refers to Great Britain as well as America. Part I. The Distribution of Property; II. The Distribution of Income; III. The Distribution of Taxes.)—3. R. GIFFEN. *The Growth of Capital*, pp. 169. Bell and Sons, 1889. (Estimates of "national capital" based on capitalisation of income-tax returns. Contains references to previous estimates of British capital, and also to leading contemporary estimates of foreign capital.)—4. United States Census Reports.—5. J. S. NICHOLSON. "The Living Capital of the United Kingdom," *Economic Journal*, 1891; and "Capital and Labour: their Relative Strength," *Economic Journal*, 1892.

(*c*) *Educative Aspects.*—RUSKIN, *passim*, and especially *Munera Pulveris*, pp. 186. Allen, 1880.

2. THEORETICAL PROBLEMS.—(*a*) *The "Classical" Theory of Value.*—(Two sorts of value—use-value and exchange-value. Price is the measure of exchange-value, and tends in the long run to conform to cost of production; but at any given moment price is prevented from being equivalent to cost of production by the constantly fluctuating ratio between demand and supply.)—1. ADAM SMITH. *Wealth of Nations*, first edition, 1776; edition by Nicholson, 1884 (especially Book I. chaps. iv. v. vi. and vii. and Book II.).—2. RICARDO. *Principles of Political Economy*, first edition, 1817; edition by Gonner, 1891 (especially chaps. i. and iv.).—3. J. S. MILL. *Principles of Political Economy*, first edition 1848, 6th edition 1865 (especially Book III. chaps. i. to vi.).—4. Articles "Classical Economists," "Cost," "Smith," "Ricardo," "Mill," etc., in Palgrave's *Dictionary*.

(*b*) *The Psychological (Austrian) Theory.*—(Use-value (utility) further analysed from the point of view of the individual consumer (user); and exchange-value further analysed from the social point of view. The total value (total utility) of a given good to a given person at a given time may be decomposed into a number of elements. Subjectively considered, these constituent elements are feelings of satisfaction, and they vary in intensity according to the quantity of the good used or acquired. The final or marginal utility (*i.e.* the utility of the last portion of the good used or acquired) is the important element of the series in determining the price which the individual can or is willing to pay. Competition between a graduated series of buyers' valuations (demand prices) and sellers' valuations (supply prices) results in an exchange-value or market-price being fixed at a certain point for a given stock of goods divisible into given parcels or units in a given market. At whatever point the market-price is actually fixed, there will be one buyer at that price (the weakest effective buyer) whose previous valuation was less than that of the rest of the actual buyers. This weakest effective buyer was the one to whom the marginal utility of money was just inferior to the marginal utility of the particular good he wanted to buy. The price or exchange-value of a good being fixed at such a point that one buyer can just, and only just, afford to buy at that price, then that price becomes as a matter of observed fact the price for all the other purchasers. Price is thus a system of social valuation related to the individual use of things through the valuation (based on marginal utility) of the weakest effective buyer. The conception of marginal utility is thus the means of establishing a relationship between those two phenomena of valuation which the older economists were unable to rationally connect, viz. use-value and exchange-value (market-value). Viewed from the subjective economic point of view, the machinery of modern market valuation may be considered as the organised system devised by generations of racial experience for selecting, at any given time, for any given stock of goods, the weakest effective buyer, and utilising the individual thus selected as the public valuer.)—1. W. SMART. *An Introduction to the Theory of Value on the lines of Menger, Wieser, and Böhm-Bawerk*, pp. vi. + 88. Macmillan, 1891. (A terse and lucid summary for elementary students.)—2. BONAR. "The Austrian Economists," *Quarterly Journal of Economics*, 1888. (A critical summary.)—3. BÖHM-BAWERK. "The Austrian Theory of Value," *Annals, American Academy*, 1891.—4. WIESER. "The Austrian School and the Theory of Value," *Economic Journal*, 1891.—5. JEVONS. *The Theory of Political Economy*, pp. lvii. + 315, 2nd ed. 1879, especially preface and chaps. i. ii. and viii.—6. WIESER. *Natural Value*. Edited, with preface and analysis, by W. Smart. Translation by C. A. Malloch, pp. xxv. + 243. Macmillan, 1898. (The most comprehensive statement of the "Austrian" theory in English, and has special grounds of appeal to accountants.)—7. Articles "Austrian Economists," "Value," "Utility," "Jevons," "Dupuit," "Gossen," etc., in Palgrave's *Dictionary*, for general reference and for foreign works.

(*c*) *Endeavours towards a Synthesis of the Classical and Psychological Theory.*—1. MARSHALL. *Work cited.*—2. SELIGMAN. "The Social Element in Value," *Quarterly Journal of Economics*, 1901.—3. E. A. Ross. "The Tendencies of Natural Values," *Yale Review*, 1893.—4. Articles in Palgrave cited above.

(*d*) *Mathematical Statement of the Theory of Value.*—1. WICKSTEED. *The Alphabetic of Economic Science*, pp. xiii. + 142. Macmillan, 1889. (Terse and lucid introduction suitable for economic beginners who have only elementary mathematics.)—2. COURNOT. *Researches into the Mathematical Principle of the Theory of Wealth.* Translated by I. Bacon, with bibliography of Mathematical Economics. A translation of the initial classic in this subject, the original appeared first in 1838.—3. IRVING FISHER. *Mathematical Investigations*, Connecticut Academy of Science and Arts, vol. lx. pp. 124, 1892. (Probably reaches the furthest point and clearest statement yet reached in mathematical handling of economics by English-

speaking writers.)—4. Article "Mathematical Method in Political Economy" in Palgrave's *Dictionary*.

(*e*) *Endeavours towards a Comprehensive Analysis of Value.*—1. P. GEDDES. *An Analysis of the Principles of Economics.* pp. 40. Williams and Norgate, 1885. (Investigates the scientific presuppositions of valuation, and analyses value into mathematical, physical, physiological, æsthetic, psychological, and social elements.)—2. J. A. HOBSON. *The Economics of Distribution.* pp. vii. + 361. Macmillan, 1900. (Starting from a purely economic standpoint, reaches an analysis substantially similar to that of Geddes, and then proceeds to construct a corresponding economic synthesis.)—3. J. S. MACKENZIE. "Notes on the Theory of Value," *Mind*, Oct. 1895. (Summary and criticism of recent contributions made by philosophy to the theory of value.)

(*f*) *Theories of Distribution.*—1. CANNAN. *A History of the Theories of Production and Distribution in English Political Economy from* 1776-1848, pp. xv. + 410. Methuen, 1894. (The assumption made by the early economists that the total annual produce is divided into three funds or shares—wages, rents, and profits—apportioned to three separate social classes, implies the following amongst other questions:—(*a*) What determines the total of wages, the total of rents, and the total of profits? (*b*) What determines the distribution of each of these total funds amongst their respective individual recipients? (*c*) What determines the rate of profit (*i.e.* the ratio of profit to capital) and the rent per acre? (*d*) What analysis can be given of profits, and how explain interest and its relation to capital and capitalist? Of these various questions, some at one time in the economic history of Britain, seemed to be of more practical importance and some at another, according to the general economic, political, and social condition of the country. The early writers tended to isolate and emphasise the particular question which happened to be uppermost each in his own time, and generally failed to discriminate it clearly from the other correlated questions.)—2. QUESNAI. *Tableau Economique*, 1767 (reprint by the British Economic Association. London, 1894). (The agricultural industries alone of occupations are productive, and yield a surplus beyond the maintenance of the producers and their economic agents of production. This surplus is rent. In addition to the agricultural or productive class, the other two economic classes are—(*a*) the land-owning class; (*b*) the "sterile" class, including manufacturers, traders, officials, etc. These two classes are "unproductive," and are maintained out of rents.)—3. RICARDO. *Work cited.* (The total produce is divided into—(*a*) Rent, apportioned to the land-owning classes; (*b*) Profits (including interest), apportioned to the owners or hirers of capital; (*c*) Wages, apportioned to the labouring classes. Rents have a unique economic character, and are determined on principles different from those that determine wages and profits. Wages and profits are both expressible in units of labour, and the exchange value of these units measured in money tends to conform to cost of production. The cost of production of a labour unit tends to be a mere subsistence wage. The surplus product, after payment of the subsistence wage, is the economic remuneration of the capitalist.)—4. KARL MARX. *Capital.* 1867. English translation by Moore and Aveling, pp. 816. Sonnenschein, 1899. (Agrees with the initial premises of Ricardo that labour and capital are both measurable in units of human exertion, but turns the argument round and maintains that the surplus beyond a mere subsistence wage economically belongs not to the capitalist but to the labourer, and is wrenched from him by force veiled under legislative forms and other social sanctions.)—5. J. B. CLARK. *The Distribution of Wealth: A Theory of Wages, Interests, and Profits.* pp. xxvii. +442. Macmillan, 1899. (Every economic function—whether that of wage-earner or of capital-owner (including land-owner)—tends to be remunerated in proportion to its product, *i.e.* in the production and distribution of the social dividend income and product tend to coincide.)—6. J. A. HOBSON. *Work cited.* (The earnings of labour, capital, and land all tend to a mere subsistence level, *i.e.* just enough to maintain upkeep, and prevent depreciation. After these subsistence payments are made out of the social dividend, there is a surplus which is divided by competition amongst the different economic groups in proportions determined by the relative strength of the competing groups.)—7. SIMON N. PATTEN. *The Theory of Prosperity.* pp. ix. + 237. Macmillan, 1902. (The classification of incomes into wages, rents, and interest is based on social distinctions now largely obliterated. The three former groups, landlords, labourers, and capitalists, not only freely merge into one another in contemporary society, but nearly every income has in it something of wages, something of rent, and something of interest. A new conception of income and a new classification of incomes based on existing economic conditions is required. The traditional threefold classification suggests three points of view from which any given individual income may be regarded—(*a*) the point of view of work and pay (wages); (*b*) the monopoly point of view (rent); and (*c*) the investment point of view (interest).)—8. Articles "Production," "Distribution," "Wages," "Profits," "Rent," "Property," "Interest," "Labour," "Land," "Capital," "Marx," "Henry George," "Quesnai," "Wealth," etc., in Palgrave's *Dictionary*.

PERIODICALS.—For general reference, bibliographical, doctrinal, and factual, the files of the following economic journals should, in addition to the encyclopædias and dictionaries cited above, be consulted:—1. *The Quarterly Journal of Economics*, from 1886 (published by Harvard University). (Publishes quarterly, exhaustive, classified, and annotated lists of economic publications.)—2. *The Yale Review*, from 1892 (published by Yale University).—3. *The Journal of Political Economy*, from 1893 (published by the University of Chicago). (Largely devoted to study of practical problems.)—4. *Annals of the American Academy of*

Political and Social Science, from 1890.—5. *The Economic Journal*, from 1891 (published by the British Economic Association). (Written mainly from the point of view of the contemporary English development of the "classical" or "orthodox" school of economics.)—6. *The Economic Review*, from 1891. (Written mainly from the point of view of a progressive social doctrine, especially concerning itself with practical applications. Publishes quarterly a conspectus of English legislation on social subjects, and a critical summary of economic information in English Government publications.)—7. *Jahrbucher für Nationalokonomie und Statistik*, from 1863. (Publishes monthly a classified and descriptive list of economic publications.)—8. *Journal des Economistes*, from 1841. (Represents the contemporary French development of the "classical" or "orthodox" school of economics.)—9. *Revue d'Economie Politique*, from 1887. (Represents more progressive economic views.)

Accretion.—Accretion is said to take place when a right originally imperfect or defective is completed in the person of the holder by some posterior act on the part of him from whom the right is derived.

Accretion is also used to denote the rule of law whereby survivors of a class of legatees take the shares of the predeceasors.

Again, the term accretion is often used to denote an increase of growth, as, for example, where a specific bequest has been vested in a person, it will in most cases carry the income accruing on it after the testator's death.

Accrue.—To arise from, or spring out of, as an actual result or growth. Thus, accrued interest at a particular moment is the interest due for the period which has elapsed since the last payment of interest, up to that time. Similarly, rent and taxes accrued to the date of a balance-sheet means the rent and taxes which have been incurred during the period embraced in the Profit and Loss Account relative to the balance-sheet, and which have not been paid.

Accumulation refers to the increase of wealth through its not being spent, but being set aside from present consumption for future uses. The rate of accumulation in any country at any particular time depends upon :—

I. Causes affecting the fund from which savings can be made. These may be divided into—

1. Natural resources such as minerals, climate, and rivers.
2. Efficiency of labour and capital, including industrial skill and organisation.
3. The amount taken by Government for public purposes either directly, as by taxes, or indirectly, as by conscription for military services. The method of spending the amount must also be taken into account.
4. Foreign trade, including freight and returns on foreign investments.
5. Credit, which saves both labour and capital. Through credit, money instead of being hoarded is now invested.
6. Means of communication, as wealth must be brought to the door of the consumer.

II. Causes which induce people to save rather than consume their wealth. The motives which induce people to save are largely moral—

1. Security that what is saved will be reserved for or enjoyed by the owner.
2. Personal desire to accumulate to provide for old age, for a family, or others.
3. Desire to rise in the social scale.
4. Facilities for investments.
5. The difference of the classes among which national wealth is distributed, as certain classes tend to save more than others.

6. The rate of interest. If the rate of interest is high there is greater inducement to invest, but a high rate of interest also tends to produce extravagance. If the return is low, there is need to save more to accumulate as much.

Accumulation of Income.—The future accumulation of income is restricted by 39 & 40 George III. c. 98, called Lord Loughborough's Act, or more commonly, the Thellusson Act, from the case which caused its enactment. Under this Act no person by deed, will, or otherwise, can dispose of property, either real or personal, in such a manner that the income is accumulated for a longer period than (1) the life of the granter; (2) twenty-one years after the death of the granter; (3) during the minority of any person living or conceived at the death of the granter; (4) during the minority of any person who would, if of full age, be entitled to the income to be accumulated.

Directions for accumulation are valid so long as they are not at variance with this statute.

Acknowledgment.—A formal admission of some fact—as, for example, the acknowledgment of indebtedness. The acknowledgment of an account means the admission by one of the parties that the account is correct, and that the balance shown is the true sum due. Such an admission implies a promise to pay upon request.

Acquirenda of Bankrupt.—This is a Scots law term, and denotes acquisitions of bankrupt prior to his discharge under a sequestration.

All such property acquired by a bankrupt before his discharge vests in the trustee in the sequestration as at the date of the acquisition.

Such acquisitions do not vest in a trustee under a cessio.

Acquittance.—A receipt in full which bars further demand.

Act and Warrant of a Trustee in a Sequestration.—In Scotland, after the election of a trustee under a sequestration has been confirmed by the Sheriff, an act and warrant is issued by the Sheriff-Clerk, which is conclusive evidence of the trustee's right and title to the sequestrated estate.

By this act and warrant the heritable and movable estate is vested in the trustee for behoof of the creditors of the bankrupt.

Act of Bankruptcy. *See* BANKRUPTCY (ENGLAND).

Actuary.—The word (according to the Oxford Dictionary) is an adaptation of the Latin *actuarius* (actus, ago), an amanuensis, a keeper of accounts, a shorthand writer. In England, in the sixteenth century and later, the word denoted a registrar or clerk, a notary, an officer appointed to write down the acts or proceedings of a Court, and in this sense it is still used in the Convocation of the Province of Canterbury. In the beginning of the nineteenth century the word appears to have been used generally of the managing secretary or accountant of a public company, and the principal officials of some banks in England and Scotland still take

the name. In its modern and universally accepted sense, however, it specially designates "An official in an insurance office whose duty it is to compile statistical tables of mortality and estimate therefrom the necessary rates of premium, etc.; or one whose profession it is to solve, for insurance companies or the public, all monetary questions that involve a consideration of the separate or combined effect of interest and (mathematical) probability, in connection with the duration of human life." In other words, an Actuary is one skilled in computing the values of benefits (annuities, reversions, etc.) in which the contingency of human life is involved; more shortly still, a computer of life contingencies.

The main sphere of actuarial work is the life assurance office. The manager of a life company may or may not be a qualified Actuary; whether or not, the office of Actuary is really distinct from that of manager, though in many cases the functions are combined, the manager taking the title of Actuary and Manager. On the manager as such, and as representing and advising the directors, devolve the general administration of the company, the superintendence of its organisation, and the direction of its operations. The duties of the Actuary as such are of a more technical character, being concerned with the more intricate calculations involved in life assurance business generally, the computation of premiums for all risks, ordinary or special, which the company may undertake, the fixing of the terms on which the office may sell annuities, the quotation of the surrender values of the company's policies, the valuing of life interests and reversions with a view to their purchase by the company, the periodical valuation of the company's liabilities, and the preparation of the returns required by Government. It devolves upon him also to investigate all statistics relating to his company's mortality experience, to frame and adjust the resulting tables, and to draw up reports embodying and explaining the same.

Apart, however, from his duties as the official of a life assurance company, the Actuary's services are frequently called for in such matters as the computation of premiums for, and the valuation of friendly societies, the valuation of widows' funds and annuity societies, the valuation for the law courts, for reversionary societies, or for private individuals, of life and reversionary interests arising out of leases, advowsons, entails, etc. Such work, however, usually—and nowadays more than formerly—falls to well-known qualified life assurance officials, and it is only in a few exceptional cases that an exclusively "chamber" practice of a lucrative character is possible.

The growth of life assurance, mainly in last century, gave rise to the Actuarial profession, the members of which, in the different countries of Europe and in America, came to form themselves into societies. The oldest and the leading society is the English *Institute of Actuaries*, founded in 1848 as "a scientific and practical association amongst the actuaries, secretaries, and managers of the life assurance societies of Great Britain." At first a small body, it has grown with the growth of life assurance, and now (1901) it numbers over 200 Fellows, 270 Associates, and 300 registered students. The functions of the Institute comprise (1) the holding of regular meetings for the reading of papers on, and the discussion of, matters pertaining to the science of life contingencies, and to insurance business in all its aspects, actuarial, legal, medical, and practical; (2) the publication of such, and other contributions, in the *Journal* of the Institute, which is now in its thirty-sixth volume, and has a world-wide reputation as the chief repository of actuarial learning and research; (3) the holding of

annual examinations for the admission of Fellows and Associates. The examination at present consists of three parts. Part I. is mainly taken up with Algebra, especially the doctrine of probabilities and finite differences; Part II. with the science of life contingencies and the elements of assurance law; while Part III. embraces a wide range of subjects both scientific and practical, such as mortality statistics, life assurance finance and practice, banking, national finance, law, and the application of the differential and integral calculus to life assurance calculations. Parts I. and II. qualify for Associateship; for Fellowship, Part III. also must be passed. The all-round training implied in such a comprehensive curriculum will be readily acknowledged. In connection with its educational functions may be mentioned the Institute's text-books on the Theory of Interest and Annuities-certain, and on Life Contingencies. These have been compiled mainly from materials in the *Journal* of the Institute, and are the recognised classics on the subjects. In pursuance of its educational aims, the Institute has for many years carried on classes for the benefit of its students, and more recently has from time to time engaged lecturers on special legal and financial subjects whose lectures have been published under the auspices of the Institute.

Moreover, the Institute (along with the Faculty of Actuaries in Scotland) has to be credited with two statistical undertakings of great magnitude and of first-rate importance, viz. the investigation, begun in 1863 and completed in 1869, into the mortality of lives assured in twenty British offices, and the investigation recently completed (so far as the principal table of mortality is concerned) into the mortality of lives assured in thirty British offices. The first of these investigations resulted in the H^{M} (Healthy Males) Life Table, which has up till now been recognised as the authoritative exponent of assured life mortality in this country, and has been adopted by all British offices as the basis for valuing their liabilities. This experience embraced over 130,000 male lives accepted as "first-class" risks, who were under observation for over 1,200,000 years in the aggregate, the number of deaths being over 20,500. The recent investigation was on a much greater scale, embracing over 608,000 "first-class" lives with an aggregate experience of over 7,600,000 years, and is the most elaborate investigation of assured life mortality ever undertaken. For details of both investigations see under "Mortality."

The Faculty of Actuaries in Scotland.—Up to 1855 there was no separate association of Scottish Actuaries, but in that year differences of opinion between the Scottish and English members of the Council of the Institute, as to the position of the Institute in relation to certain of its members, came to a head, and resulted in the resignation of the Scottish members, and the formation by them of the Faculty of Actuaries in Scotland. The Constitution is based to some extent on that of the Institute, and the qualifications of its members are similar, although the curriculum of study is not of quite so wide a range. At present the Faculty numbers some 150 Fellows, 15 Associates (all of whom have passed the examinations and are entitled to admission as Fellows after a year's period of Associateship), and 160 enrolled students. Up to the present year (1901) the holding of meetings for the communication of papers was not undertaken directly by the Faculty, but was delegated to the Actuarial Society of Edinburgh, a society formed under the auspices of the Faculty in 1859 with the view of assisting and encouraging its younger members in their studies. The Society met regularly, and its published transactions—many of them of sterling excellence—occupy four volumes. Lately, however, the

Society was dissolved, and its functions have devolved upon the Faculty itself.

As already stated, the Faculty co-operated with the Institute in the 1863 mortality investigation. At the same time, the data supplied by the Scottish offices were separately tabulated and tables of mortality deduced therefrom. These are known as the "Ten Scotch Offices" Experience.

Edinburgh being the home of so many life offices of the first rank, the formation of an association of actuaries there was most natural, and the Faculty has amply justified its existence. Year by year, however, an increasing number of its younger members seek and obtain the Institute's qualifications also, and there is a growing feeling that closer co-operation of both bodies might be desirable, if only to the extent of a joint system of examinations.

In the British colonies of Canada, Australia, and South Africa, life assurance business is carried on with great vigour, and actuarial study is promoted by local societies and by examinations held periodically by the Institute.

Outside the British Empire also, in America, and in most of the countries of Europe, there exist actuarial societies modelled more or less closely on the Institute, and doing similar work. The world-wide scope and the solidarity of the profession has of late found expression periodically in international congresses of Actuaries, attended by delegates from all parts of the world, from America to Japan. The first of them was held at Brussels in 1895, the second in London in 1898, and the third in Paris in 1900.

J. R. ARMSTRONG.

Adjudication of Bankruptcy is the order of the English Court whereby a person is adjudged bankrupt.

Adjudication for Debt is a diligence used in Scotland whereby a creditor attaches the lands or other heritable property of his debtor in satisfaction of, or security for, his debt.

Adjustment, Average.—All loss which arises through extra sacrifices being made, or exposures incurred, for the preservation of a ship and cargo comes within general average, and is borne by all who are interested. The calculations of the loss incurred and the adjustment of the amount to be contributed by the ship, the cargo, and the freight respectively, is effected by a class of arbitrators called average adjusters. In arriving at the amount to be made good the following are the chief rules:—

1. Disbursements are estimated at the amount expended, plus the cost of raising funds.

2. The cargo sacrificed is valued at such a sum as would place the owner in the same position at the time and place of adjustment as if none of his goods had been sacrificed.

3. Ship's materials sacrificed are valued at the cost of repair less a deduction of one-third in respect of the advantage derived by the owner from the fresh repairs. To the amount of loss so ascertained contribution has to be made:—

(*a*) By the ship in proportion to its actual value by the owner at the time of adjustment.

(*b*) By the cargo in proportion to its net market value at the date of delivery or at the time and place of adjustment, deducting the expenses the merchant incurs in case of delivery.

(*c*) By the freight less the expense of earning it, which would have been saved had the ship been lost.

Administrator.—The personal representative of a deceased intestate or of a testator whose will does not appoint any executor, or whose executors are unwilling or unable to act. When a person dies intestate his real estate passes immediately to his heir, that is, to the person designated by law as entitled to its enjoyment. His personal estate has to be administered for the benefit of his creditors and of the next of kin entitled to enjoy the surplus after payment of his debts. The administrator is the person who takes out letters of administration by being nominated by the probate division of the High Court to the administration of the estate. Letters of administration are usually granted to the next of kin; failing him, to a creditor or to any other person whom the Court thinks suitable. The administrator has no beneficial interest in the estate and no liability beyond the estate which he receives. He is bound to realise the personal estate, to pay the funeral expenses and debts out of it, and to distribute the balance among the persons entitled to it. Should the administrator die before he fully disposes of the estate a new administrator must be appointed.

Ad Valorem Duty.—A duty levied on a commodity in proportion to the value in contrast to a specific charge on the quantity. In theory this form of taxation appears very equitable, but in practice customs duties *ad valorem* are found to work out with great inequality, and also to be inconvenient to levy in consequence of:—

1. The difficulty of ascertaining correctly the value of the goods.
2. The liability to fraud.
3. The delay caused to importers.

At the present time the wine duties levied differently on different classes of wine are the nearest approach we have to *ad valorem* duties, but, practically, with that exception, they are not used in the British fiscal system.

Advice.—Primarily, an order given by one person to another to perform for him some act of business, such as the payment of a bill of exchange. Used also in the sense of giving information on business matters generally.

Affidavit is a written statement emitted on oath before one having authority to administer oaths.

Agency.—*Definition.*—In business life it is found impracticable always to make and fulfil contracts *in propriâ personâ*. For that reason, accordingly, a relationship in law is often created, the principal of the two parties to which gives authority to the other, called the agent, to perform in a subordinate way some particular legal act or to perform for him legal acts generally within certain limits, the principal to be answerable to third parties affected in respect of all acts properly done by the agent within the scope of the authority granted. The *consensus* of the parties must be expressed in some manner recognised in law as sufficient, but remuneration is not of the essence of the contract. The discretion allowed to the agent is always subject more or less to the control and directions of the principal, in which respect an agent differs from a contractor, who, being answerable in damages if his work is not done in accordance with the terms of his contract, may exercise an independent choice as to ways and means. In many cases the line is hard to draw between a contract of agency and

some other contractual relationship importing agency, *e.g.* that of master and servant; but a consideration of the whole facts of each case will fix its true nature. Between wrong-doers there can be no agency, such persons being each personally liable.

The Parties to the Relationship.—Only a person having legal capacity to contract obligations can be principal. Any one, on the other hand, may in general act as agent. Some agents, however, must possess special qualifications; thus, brokers in London cannot sue for work and labour unless duly licensed by the Mayor and Aldermen of the City. Cp. Stockbrokers, Auctioneers, Executors, and Administrators, etc. At the date of the contract the principal must be in existence, and the agent must intend to be agent; otherwise, the contract will be that of the agent alone, requiring some act of assignment to bind the principal.

Creation of the Relationship.—Being matter of contract, the general rule requiring offer and acceptance holds good. The offer or appointment may be made in various ways—(1) It may be made by deed; the best example of which kind of appointment is a power of attorney. It is a general rule of English law that where the act to be done is the execution of a deed, the agent must be appointed by deed. Generally speaking, also, the agent of a corporation aggregate must be appointed by deed. In Scotland, the appointment of an agent to manage land or affairs is made by formal factory and commission. (2) The appointment may be made by a less formal writing than a deed or even by parol. Writing is, however, always advisable. (3) The appointment may be implied from the conduct of the parties, *e.g.* from the "holding out" to third parties that the relationship existed or from the permission to some one to retain the possession of goods as factor. So third parties are, unless advised to the contrary, entitled to assume the existence of a limited agency arising from such relationships as husband and wife, parent and child, master and servant, partner and co-partner, and the like, and conferring on the person playing the subordinate part power to act in the ordinary way of business to the extent recognised by usage. (4) Lastly, ratification is equivalent to previous authority. Accordingly, if B makes a contract on behalf of A without the latter's authorisation, and A afterwards unequivocally adopts it, the necessary authority will be presumed to have been originally granted. Sometimes the principal is bound to ratify, *e.g.* where the agency has arisen out of "extreme, stringent, commercial necessity," as when a shipmaster has sold a perishable cargo before reaching the port of destination on ascertaining that the only alternative would be a total loss.

The acceptance of the appointment need not be signified expressly by the agent, but may be implied, as where the agent has done some material part of the task in consequence of the offer made.

Nature of the Authority conferred.—Agency is general or special. A general authority implies a right to do all subordinate acts incident to and necessary for the execution of that authority in the usual way of business. Acts not expressly authorised done otherwise than in the usual way of business are presumed to have been improperly done however *bonâ fide* the agent may have acted. Subject to that, a principal is bound by all the acts of his general agent within the scope of his authority though in excess of particular instructions. On the other hand, a special agent is for a particular purpose, and cannot bind his principal beyond the extent of the authority granted him. The limits of the authority of a special agent may often be fixed not by the principal but by custom of merchants recognised in law, *e.g.* in the cases of a shipbroker, a stockbroker, an insurance broker,

and the like. Where two or more agents are appointed to act conjointly all must unite to act, unless it is provided that a majority or a quorum may act.

Duration of the Authority.—The authority of an agent continues until it is revoked by the principal, or until the expiration of the time limit, if such a limit has been fixed, or until the completion of the business if it has been created merely in respect of some particular business. If the agency has been coupled with an interest, as to discharge a debt due to the agent, or by way of security for money lent by the agent, or if it has been stipulated that it shall not be revocable except in certain events, it cannot be revoked without rendering the principal liable in damages for breach of contract. Revocation may be express, or it may be implied from circumstances. The death of the principal is so absolute a revocation that it destroys the liability of his representatives in respect of all new contracts entered into by the agent subsequent thereto, even in ignorance of the death having taken place. If there are two joint principals, the death of one will put an end to the agency. The lunacy of either party will also *primâ facie* determine the relationship. Lastly, while the bankruptcy of the agent will not necessarily determine his authority, that of the principal will put an end to the agency so far as the trustee's rights will be affected. An agent paying away monies of a principal after notice of an act of bankruptcy committed within three months next preceding the presentation of the petition, will be personally liable to repay such monies to the trustee (see the Bankruptcy Act 1883, 46 & 47 Vict. c. 52, secs. 43, 49).

Mutual Rights and Duties of the Parties.—The agent is bound to render to his principal the services agreed upon, together with the free use of his discretion and judgment. If the agreement is for all his time he cannot engage to a third person while his employment lasts. In the performance of his duties he must adopt business-like methods, following, however, any special instructions of his principal; and an agent will be liable for negligence, even when employed gratuitously, if the employment implies skill. For example, it is negligence unless it is the usage to receive payment otherwise than in cash.

Irregularities on the part of an agent will be strictly regarded and severely dealt with in a court of justice. An agent is bound to keep just and true accounts, and to keep his principal's money and property unmixed with his own money and property, or with those of others. He must not make personal profit out of the agency, and is liable to account to his principal for all profits made without the consent or knowledge of the latter, and in general for all profits made in his fiduciary capacity, including bonuses, interests, discounts, and abatements received. If there is unreasonable delay in delivering such accounts, the agent will be liable to his principal for interest, and a like liability will be incurred if he keeps money of his principal in his hands for an unreasonable period. An agent for sale who takes an interest under a purchase negotiated by himself is bound to disclose such interest to his principal; and it is not enough merely to put the latter on his inquiry. An agent cannot turn himself into a principal without making full disclosure of the fact. It is for the agent in such cases to prove a full disclosure. The transactions, however, are not void but only voidable. In respect of money of his principal in his hands for a special purpose, *e.g.* investment, an agent will be liable as a trustee; but in other respects he is not in general regarded as a trustee for his principal so as to enable the latter to follow money in the agent's hands.

An agent cannot, as a rule, delegate his authority except with the assent of the principal. Any warranted delegation must strictly comply with the permission to delegate. The right to delegate may sometimes be implied, as where the agency appears to contemplate the employment of some particular deputy. So it is lawful to employ arbitrators, solicitors, clerks, and others in cases where it is business usage to do so. Material acts, however, cannot as a rule be so done, *e.g.* on a sale by auction an auctioneer's clerk cannot, without special authority from a purchaser of land, fill up a memorandum in writing to satisfy the Statute of Frauds. Where a sub-agent is employed, even with the knowledge of the principal, the agent is personally liable to the principal for the monies received by such sub-agent. So what is known as a *del credere* commission implies an engagement on the part of the broker to be primarily liable to his principal, though the latter may resort to the person trusted as a collateral security.

The possession of an agent is the possession of the principal. Hence a principal may acquire a possessory title to real property by receiving the rents through an agent for the period of prescription. And the acts of the agent will prevent the Statute of Limitations running against the principal.

An agent may act either for a remuneration or gratuitously. In most cases the remuneration takes the form of a commission. This is in general earned when a binding bargain has been procured through the agency, but, if the immediate purpose of the agreement was an introduction, the commission will be earned if a proper person is introduced though no actual business results. Business may often result in an indirect manner, and then the commission will still be payable if the chain of connection can be made out. It is not enough, however, to prove that business has resulted as a remote and casual consequence of the intervention of the person claiming to be agent. Where work and labour have been done but no actual business has resulted, it will depend upon the materiality of the work whether the commission has been earned. A *quantum meruit* will, at all events, generally be claimable in such cases as well as in cases where the agent has performed his part of the contract and the business has gone off through the act of the principal. The circumstances or the terms of the employment will settle the point. Sometimes the measure of damages will be the full amount of the commission agreed upon. If the business effected is ineffectual or useless no commission will be due.

The amount of the remuneration should be specified in the contract of agency. If not specified, the guiding rule will be the general usage in business of a similar kind. How far expenses and extras can be charged in addition to the commission will also depend upon the agreement or usage, but unusual and extraordinary expenses incurred can as a rule be recovered.

An agent may retain his commission out of monies in his hands. A factor has a lien on goods of his principal in his possession as factor for the general balance due to him, but the mere bailee of goods for the purpose of sale has not that privilege except in respect of the particular transaction. The extent of an agent's lien depends upon agreement or mercantile usage.

Rights and Duties affecting Third Parties.—Though an agent acts in his own name without disclosing his principal but for the latter's benefit, the principal is entitled to sue on the contract subject to any equities which may exist against the agent. But when a foreign principal instructs an English agent, third parties dealing with the latter are liable only to him and not to the principal unless the agent's authority included a power to

establish privity of contract between the principal and the other contracting party, and the circumstances show that there was an intention so to establish privity of contract between them. An agent authorised to sell goods has, in the absence of instructions to the contrary, power to receive the proceeds and give a discharge. A solicitor for a party and a bailiff levying a distress has each the same right. Third parties should, however, always inquire as to the extent of the agent's authority for this purpose. Thus while payment may be made without authority to a broker for an undisclosed principal, it cannot as a rule be so made where the principal is disclosed.

Generally speaking, a principal is liable to third parties for all acts of the agent done within his ostensible authority or incidental to the ordinary course of the business to be transacted. No private arrangement between principal and agent or anything short of actual notice to the third parties will remove this liability. A defendant will be estopped from denying the existence of agency where he has acted so as to induce the plaintiff to believe that the person with whom he contracted was the defendant's agent. Permission to hold the indicia of title to goods belonging to another warrants third parties in assuming that other to be agent. Previous course of dealing, too, will be sufficient warrant if there has been no notice of revocation of the relationship. But third parties cannot recover if they knew that the agent was acting *ultra vires.*

In this connection the Factors' Acts are important. They were passed with a view to the protection of persons dealing in good faith with factors and other agents entrusted with goods or the indicia of title to goods without notice of special limits to the authority of such factors and agents. In England the statutory provisions on the subject are contained in the Factors' Act 1889, 52 & 53 Vict. c. 45, and since 1890 the same provisions apply to Scotland (by virtue of the Factors' (Scotland) Act 1890, 53 & 54 Vict. c. 40).

A principal is also liable to third persons for wrongs committed by his agent, provided they were committed by him as agent acting within the scope of his authority. The principal cannot even in such a case plead that he instructed the agent not to do the act. The principal's liability for wrongs is a joint and several one with the agent.

An agent in dealing with third parties may pledge his own credit, and will then be personally liable. Whether he does so will be inferred from the agreement made or the whole circumstances of the case. If he signs his own name without qualification, the presumption will be a contract for his own benefit unless the nature of the contract clearly indicates agency. If, however, the agreement is made in a representative capacity, it will be deemed to be that of the principal alone. In the case of written agreements parol evidence is not as a rule admissible to prove what the intention was, so that all such should clearly specify agency if agency is intended. If a person contracts as agent without authority he will be liable in damages for breach of an implied warranty that he had authority; and if an agent having authority acts fraudulently so that the principal is not bound, he may be sued either *ex delicto* for the deceit or *ex contractu* for breach of warranty. As agent he is not, except by special usage, entitled either to sue or to be sued on a contract made unless he has a lien upon or some special property in the subject-matter.

Remedies.—An agent is not liable for merely omitting to perform a commission, unless he is bound by some contract or duty to perform it; but if he commit a misfeasance in the performance he will be liable in respect

thereof. So if he wrongfully neglects or refuses to pay over to the principal monies of the latter in his hands, he is liable to an action for money received or for an account. And a *del credere* agent may be sued upon his guarantee of the price of goods sold by him. On the other hand, an agent is entitled to sue his principal for his remuneration and expenses in circumstances already explained. When an agent sues third parties he must do so in name of his principal, unless the cause of action is a contract importing a personal liability on his part, or giving him some right in his own person. Even a *del credere* agent selling for a disclosed principal cannot sue in his own name. In the case of a foreign principal the agent may usually sue as nominal plaintiff, but the real plaintiff will be bound to make discovery just as if he had been made plaintiff on the record under penalty of the action being stayed. So an agent is liable to be personally sued if credit was given to him alone, or if he was really principal by reason of his not having authority or of his having exceeded his authority. On his torts, too, an agent is liable to be personally sued.

JOHN R. M'ILRAITH.

Agiot or Agio is a term used in Venetian finance to denote the difference in exchange between depreciated currency and metal of full value. Such depreciated currency formerly consisted chiefly of debased or worn coins, but more recently paper money, whether bank notes or government notes, are examples. The banks established at Venice, Hamburg, Genoa, Amsterdam, and elsewhere were bound by law to receive deposits and make payments according to certain standards, and the premiums charged upon such money as compared with the general circulation represented the agio payable to the banks in question. These banks were used in making international payments because their standard was fixed, and they were largely instrumental in introducing the system of economising coinage by bills of exchange instead of actual coin.

Agreement.—Agreement is the joint act of two or more persons whereby one or more of them undertake obligations in favour of the other or others. The term agreement is used in many instances for "contract." A contract is an "agreement enforceable by law," whereas an agreement may or may not be enforceable by law. For example, when a bet takes place, the parties enter into an agreement, but such an agreement is not enforceable by law. The term agreement includes contracts enforceable by law as well as others not so enforceable.

Aliment.—Denotes in Scotland the maintenance or support which certain persons are legally entitled to claim from others on account of their connection with them. For example, a husband is liable for the support of his wife. It corresponds to both the English terms alimony and maintenance.

Alimentary Interest —Where a trust has been created, and where it is stipulated that the interest of the beneficiary in a periodic payment is "alimentary," this means that the beneficiary is incapable of assigning his interest in such a trust by anticipation for other than alimentary considerations.

Alimony is a pecuniary allowance payable upon a separation, by one of the parties to a subsisting marriage, to, or on behalf of, the other party to the marriage.

Aliquot Part is the part of a number or quantity which divides into that number or quantity without leaving a remainder. For example, 4 is an aliquot part of 12. The use of aliquot parts is very useful in connection with multiplication, especially where fractional quantities are being dealt with.

Allenarly is the old Scotch form of "only." It is still in Scotland the recognised term for restricting the term liferent to its natural meaning. By a rule of Scotch conveyancing, a conveyance to A in liferent and B in fee would generally give both liferent and fee to A, but a conveyance to A in liferent allenarly (or only) and B in fee restricts A's right to a bare liferent.

Allonge.—A slip of paper fastened to a bill of exchange to receive indorsements for which there is no space on the bill itself. To prevent fraud, and also in compliance with the provision of some of the foreign codes, the first of the indorsement in connection with the allonge is usually made so as to begin on the bill and end on the allonge.

Allotment is the process of distributing shares, stock, or debentures to those who have applied for them, or to those who are otherwise entitled to have shares, stock, or debentures allotted to them. The allotment in connection with shares in a limited company takes place at a meeting of directors of the company. A statement is prepared from the application letters showing the names, addresses, &c. of the applicants, with the number of shares applied for. The directors go over this list of applicants and allot the shares to the respective applicants in such proportions as they may decide on.

Allotment Letter.—After the directors in a limited company have completed the allotment, a letter is sent to the applicant for shares or debentures stating the amount of shares or debentures allotted to him. This letter is called an allotment letter. Allotment letters where the nominal amount which is allotted is £5 or upwards require a 6d. stamp, and where the nominal amount allotted is under £5 the stamp duty is 1d.

Allowance is the deduction made from the weight of goods either to represent the weight of the package, or refuse, or a particular deduction established by custom of certain trades or localities. *Tare* is the allowance for the weight of the box or package or the cart or waggon on which the goods are conveyed, and *tret* is the allowance for waste. The difference between gross and net weight, and between live and dead weight, is the allowance.

Amalgamation.—The term amalgamation is used in business to denote the combination of two or more concerns previously trading separately into one concern, as when small private companies and private traders unite their businesses into one limited company. The idea may arise from one of the owners who sets about making inquiries of the others as to whether they are willing to join the amalgamation. The idea in

another instance may come from an outsider not in the trade at all, and he sets about endeavouring to get owners to join an amalgamation.

The amalgamation which springs from the owners themselves is the best. Promoters in all parts of the country have endeavoured to form amalgamations, but, in the majority of cases, nothing successful has come of them. In deciding whether or not an amalgamation should take place various points arise. The undertakings about to be amalgamated should be of a permanent kind, and not connected with an industry which is decaying. The number of companies or firms should be limited and not extend to an unreasonable magnitude so as to be unmanageable. The chances of success of the amalgamated concerns must be considered, and good reasons should be given for any advantages of amalgamation that are held out. If a trader is of opinion that open competition would be more beneficial to himself he will think twice before he joins the amalgamation.

In connection with amalgamations accountants are usually called in. The position and duties of an accountant so employed vary according to the capacity in which he is asked to act. He may be called in to investigate and report on the accounts and profits of the various concerns. In this case the accountant's duty is to issue a certificate of the profits earned by the firms interested. Such a certificate, in all probability, will be inserted in the prospectus of the new concern, and it will therefore be the accountant's duty to disclose the whole facts, as persons subscribing for shares in the new concern do so on the strength of his certificate.

Again, the accountant may be called in to act as promoter for the parties whose businesses are being amalgamated, and his duties are more arduous than that of one who is promoting a single concern. With an amalgamation he has to decide or advise what part each owner should have in the capital and management of the new concern and other matters.

American Securities.—American securities may be divided into:—

I. Government Securities.
II. Railway Securities.
III. Municipal Securities.
IV. Securities of Private Corporations.

I. *Government Securities.*—Bonds are the favourite form of securities in the United States, whether issued in connection with Government Loans or Companies. Bonds have been issued at various times, the United States Government Four Per Cent Funded Loan of 1877, and the loan of 1891 being examples.

II. *Railway Securities.*—These rank in the following order:—

1. Receivers' Certificates.
2. Prior Lien Bonds.
3. Mortgage Bonds.
4. Debentures.
5. Income Bonds.
6. Shares.

III. *Municipal Securities.*—A great conflict of opinion exists as to the legality of municipal corporations issuing bonds, but power may be given to a corporation to do so, in which case the bonds would be negotiable like other bonds.

IV. *Securities of Private Corporations.*—As regards private corporations, each state has laws peculiar to itself, and the liability and powers of stock-holders thus vary. The stock in such corporations consists of shares, and the holder is called stock-holder.

Amortisation.—In law, amortisation signifies the transfer of loans to a corporation, guild, or charitable body in perpetuity, or, in other words, an alienation in mortmain. In finance, amortisation is the redemption, reimbursement, liquidation, or repayment of debt generally, and the term is often applied in connection with the sinking funds of mortgages and debentures. It is also used in connection with public and Local Government Loans.

Amt.—Contraction for Amount.

Annuities.—An annuity (Fr. *annuité*, med. L. *annuitas*, fr. *annuus*, yearly) in its simplest sense denotes an annual payment. But the annuity, as generally understood, indicates a form of investment yielding a payment of money at stated intervals. These payments form a charge upon the estate of the party by whom they are granted. The stated interval is not necessarily a year—indeed, the great majority of annuities are payable half-yearly—but the important consideration to keep in view is that the term of payment must not be irregular. An annuity may be granted for a definite number of years; for an indefinite number of years; for the lifetime of any person or persons; or for a term dependent on human life, but also involving other contingencies.

In general, an annuity is said to be payable during a given status. If it be payable for a definite number of years, it is called an annuity-certain; if it is to continue indefinitely, it is called a perpetuity. If the annuity depends upon a life or a combination of lives, it is called a life annuity; if payable during a given period from date of granting, but still contingent upon survivance, it is called a temporary annuity; if deferred for a term of years, whether dependent or independent of life, it is called a deferred annuity; if deferred for a term of years, and to continue thereafter for a term of years, it is called a deferred temporary annuity, or an intercepted annuity. An annuity in which the first payment is due at the date of granting is called an annuity-due. An annuity to commence at the death of A, and to continue thereafter so long as B may live, is called a reversionary annuity or survivorship annuity. A compound survivorship annuity differs from an ordinary survivorship in that its being entered upon depends upon certain other contingencies. An example of a compound survivorship annuity would be one payable to A after the death of the survivor of B and C, but only if C be that survivor. When describing an annuity, the amount spoken of is the total sum paid in the year—the annual rent; thus an annuity of 1 payable m times a year is one in which there are m payments of $\frac{1}{m}$ each.

The person to whom the annuity is paid is called the annuitant, and the life involved is called the nominee.

An annuity has been defined as "an investment of money whereby the investor becomes entitled to receive a series of equal annual payments, which (except in the case of perpetual annuities), include the ultimate return of both principal and interest." Immediate annuities commence at

the end of the first interval of payment after the purchase; deferred and reversionary annuities are said to be entered upon when the specified term has elapsed, or the contingency has taken place, and the first payment of the annuity is made on the expiry of a full interval of payment thereafter. In life annuities the payments cease at the death of the nominee; in annuities-certain after the specified number of years; in perpetuities upon the date of repayment of the principal.

By the Apportionment Act 1870, all life annuities are held as accruing from day to day, and are therefore apportionable or complete, that is to say, the proportion from the date of last payment of the annuity up to the date of death of the nominee is due on that event occurring, unless a distinct stipulation to the contrary appears in the deed creating the annuity. The premiums payable under life policies are of the nature of life annuities, but they form the only exception to this rule of apportionment.

Annuities are divisible into two main classes:—

(1) Annuities-certain, that is payable for a definite term of years, or in perpetuity, and independent of any contingency. Such annuities depend only upon the operation of interest; and

(2) Annuities depending not only upon the operation of interest, but also upon some contingency which gives an uncertainty as to the period for which the annuity may be payable.

In the investigations which follow, it is assumed that the payments are 1 per annum, where 1 is any unit of value. The advantage of such a method is that the demonstrations will apply to all currencies. It is merely a matter of proportion to ascertain the results when the annual payment differs from 1.

Annuities-certain

The value of an annuity-certain of 1 for n years is deduced as follows:—

Let i denote the interest on 1 for a year, then $(1+i)$ will be the amount of 1 at the end of the year. Continuing, we find 1 amount to $(1+i)^2$, that is $(1+i)\times(1+i)$, at the end of the second year, and so on. By simple proportion, the reciprocals of these amounts give us the present values of 1 due at the end of any year. Such present values are denoted by v raised to the power of the number of years involved. Thus $(1+i)^3$ being the amount of 1 at the end of three years, the present value of 1 due at the end of that period is $\frac{1}{(1+i)^3}$, or v^3.

Hence

$$v+v^2+v^3+\ldots+v^n$$

represents the present value of the series of n payments of the annuity, which by a simple geometrical progression summation may be shown to be equal to

$$\frac{1-v^n}{i} \quad . \quad . \quad . \quad . \quad . \quad . \quad . \quad . \quad (1),$$

and is denoted by the symbol $a_{\overline{n}|}$, a standing for annuity, n denoting the status, and $\overline{\ }|$ signifying that the nature of the status is a term certain.

If the annuity-certain is to run for n years deferred m years, the value of the series of payments is deduced as follows:—

As we have seen above, v is the value of a unit payable at the end of one year, v^2 is the corresponding value when the payment is due two years

hence; similarly the value of a series of n payments, the first of which is due $m+1$ years hence, equals

$$\begin{aligned} &v^{m+1}+v^{m+2}+v^{m+3}+\ldots+v^{m+n} \\ &=v^m(v+v^2+v^3+\ldots+v^n); \end{aligned}$$

but we have seen that the portion within the brackets equals $a_{\overline{n}|}$, therefore the deferred annuity value equals

$$v^m a_{\overline{n}|}. \tag{2}$$

The series representing the deferred annuity may also be expressed in the form

$$\begin{aligned} &(v+v^2+\ldots+v^{m+n})-(v+v^2+\ldots+v^m) \\ &=a_{\overline{m+n}|}-a_{\overline{m}|}. \end{aligned} \tag{3}$$

Since 1 put out to interest will provide i at the end of each year, we have 1 equal to the value of a perpetuity of i, and hence by simple proportion $\frac{1}{i}$ will represent the value of a perpetuity of 1, and is denoted by $a_{\overline{\infty}|}$. The symbol ∞ denotes that the status is an indefinite period.

The dividend on consols is an instance of a perpetuity.

Substituting $n+\frac{1}{m}$ for n in formula (1), we have the value of an annuity-certain for $n+\frac{1}{m}$ years equal to

$$\frac{1-v^{n+\frac{1}{m}}}{i}=\frac{1-v^n}{i}+v^{n+\frac{1}{m}}\frac{(1+i)^{\frac{1}{m}}-1}{i}.$$

Now, we have seen that the amount of 1 at the end of a year is $(1+i)$, i representing the interest. Similarly, the amount of 1 at the end of the mth part of a year is $(1+i)^{\frac{1}{m}}$, and the interest for that period is therefore

$$\left\{(1+i)^{\frac{1}{m}}-1\right\}.$$

In other words, $\left\{(1+i)^{\frac{1}{m}}-1\right\}$ is the proportion for the mth part of a year of an annual payment of i. Hence by simple proportion

$$\frac{\left\{(1+i)^{\frac{1}{m}}-1\right\}}{i}$$

is the proportion for the mth part of a year of an annual payment of 1. We therefore see that the value of an annuity-certain for $n+\frac{1}{m}$ years consists of n payments of 1 due at the end of each year, and a final proportion for the mth part of a year due at the end of $n+\frac{1}{m}$ years. In practice it is customary to pay $\frac{1}{m}$ at the end of the period, which would be correct on the assumption of simple interest for the fractional part of a year.

The amount of an annuity-certain of 1 for n years equals

$$1+(1+i)+(1+i)^2+\ldots+(1+i)^{n-1}=\frac{(1+i)^n-1}{i}, \tag{4}$$

and is denoted by the symbol $s_{\overline{n}|}$, s representing "sum."

Hitherto we have considered the annuity payments to be made annually. If they are to be payable, say, m times a year, the value of the annuity may be deduced as follows:—

The m payments made throughout the year will, by the end of the year, on the principles already explained, amount to

$$\frac{1}{m}\left\{1+(1+i)^{\frac{1}{m}}+(1+i)^{\frac{2}{m}}+\ \ldots\ +(1+i)^{\frac{m-1}{m}}\right\}.$$

It will be seen that the series within brackets is a geometrical progression with common ratio $(1+i)^{\frac{1}{m}}$.
The sum of the series is

$$\frac{i}{(1+i)^{\frac{1}{m}}-1}.$$

Thus the whole expression is equal to

$$\frac{i}{m\left\{(1+i)^{\frac{1}{m}}-1\right\}},$$

which may be looked upon as the equivalent amount of yearly payment, and hence the value of the annuity payable m times a year will be equal to

$$a_{\overline{n}|} \times \frac{i}{m\left\{(1+i)^{\frac{1}{m}}-1\right\}}.$$

Giving to $a_{\overline{n}|}$ the value found in formula (1), we have

$$\frac{1-v^n}{i} \times \frac{i}{m\left\{(1+i)^{\frac{1}{m}}-1\right\}}$$

$$= \frac{1-v^n}{m\left\{(1+i)^{\frac{1}{m}}-1\right\}}.$$

To this has been given the symbol $a^{(m)}_{\overline{n}|}$, the m within brackets denoting that the payments are made m times a year.
In practice it is more usual to treat the annuity as being for mn intervals at rate of interest $\frac{i}{m}$. This has the effect of altering the rate of interest from i to

$$\left(1+\frac{i}{m}\right)^m-1.$$

Theoretically, as is evident from the formula, the rate of interest employed in the calculation of the annuity for mn intervals should be

$$\left\{(1+i)^{\frac{1}{m}}-1\right\}.$$

We have seen that the present value of an annual payment of 1 for n years is $a_{\overline{n}|}$. Hence an annual payment of 1 will redeem a debt of $a_{\overline{n}|}$ in n years. The annual payment required to be made at the end of each year to redeem a debt of 1 within n years is therefore

$$\frac{1}{a_{\overline{n}|}}. \qquad (5)$$

This provides both principal and interest.
On the same principles the sinking fund, that is the amount that must

be invested at the close of each year to redeem a debt of 1 within the same period, is

$$\frac{1}{s_{\overline{n}|}}. \tag{6}$$

One important application of the theory of annuities-certain is to the calculation of the advance to be made in consideration of an annuity-certain for a term of years. Municipal corporations frequently adopt this plan as a suitable means of repaying sums borrowed on the security of the rates, and limited owners of real property wishing to improve their estates are empowered to raise money on the same principles. A practical difficulty in connection with these transactions is the question of income-tax. Annuities are different from all other investments in that the capital invested in their purchase is not returnable to the investor when the annuity payments cease; each payment of the annuity, indeed, consists of two parts, an instalment of capital repaid, and interest on the capital outstanding. It is accordingly not unusual when such a charge is created, to prepare a schedule, which is incorporated in the deed of security, showing the respective amounts of capital and interest which are contained in each successive payment of the annuity.

Such a schedule should contain the following particulars:—

No. of payment.	Interest contained in payment.	Principal contained in payment.	Principal repaid to date.	Principal still outstanding.
(1)	(2)	(3)	(4)	(5)

The method of completing the above is as follows. We will assume the original debt to be the value of an annuity of 1 for n years. The debt at the beginning of the period is therefore equal to

$$\frac{1-v^n}{i}$$

(see formula (1)), which by the end of the first year will have increased by the operation of interest to

$$(1+i)\frac{(1-v^n)}{i}.$$

Deducting the payment of 1 due at the end of the year, we have the principal outstanding at the close of the year equal to

$$(1+i)\frac{(1-v^n)}{i}-1=\frac{1+i-v^{n-1}-i}{i}=\frac{1-v^{n-1}}{i},$$

which, by analogy with formula (1) $= a_{\overline{n-1}|}$.

Continuing, we would find that the principal outstanding at the close of any year—say the mth—would be the value of an annuity for the remainder of the term, that is $a_{\overline{n-m}|}$. The principal outstanding at the end of the $(m-1)$th year being

$$a_{\overline{n-m+1}|}=\frac{1-v^{n-m+1}}{i},$$

one year's interest thereon equals

$$i\left(\frac{1-v^{n-m+1}}{i}\right)=1-v^{n-m+1},$$

which is the interest contained in the mth payment of the annuity. The amount of the payment being 1, the principal contained in the same pay-

ment will be $1-(1-v^{n-m+1})$, or v^{n-m+1}. The principal repaid at the end of any number of years is the sum to date of column (3), the principal outstanding being obviously the difference between the figure in column (4) and the original indebtedness.

The theory of annuities-certain is made use of in connection with the calculation of premiums for sinking fund assurances—that is assurances securing a capital sum at the expiration of a specified term, irrespective of any contingency. Such assurances are also known as fixed term or leasehold redemption assurances. These are of comparatively recent growth, but of late years the general question has assumed importance by reason of the magnitude of the assurances involved.

Policies covering assurances of this nature are frequently effected to secure the repayment of debentures. Much household property in England is let on repairing lease, and these assurances are sometimes effected to provide for possible dilapidations at the time the lease expires. Again, such an assurance is available to provide the difference between investments bought at a premium and the par price at which they will be repaid.

The single premium for such an assurance is obviously v^n, the present value of 1 due at the end of n years. The annual premium may be deduced as follows:—

$a_{\overline{n-1}|}$ is the present value of an annuity-certain of 1 for $n-1$ years. $1+a_{\overline{n-1}|}$ is the value of 1 paid down, and an annuity for $(n-1)$ years, or an annuity-due for n years. In other words, 1 paid at the beginning of each year, *i.e.* an annual premium of 1, will redeem a debt of $(1+a_{\overline{n-1}|})$ in n years. Therefore, by simple proportion, an annual payment of $\frac{1}{1+a_{\overline{n-1}|}}$ will redeem a debt of 1 in n years—thus an annual premium of $\frac{v^n}{1+a_{\overline{n-1}|}}$ will redeem a debt of v^n within n years, which is the premium required.

It is well known that the rate of interest has, in the main, been steadily decreasing for years, and it is not unreasonable to assume that the decrease may be continued. It is therefore a wise plan, in calculating the premiums for these assurances, to assume a decreasing rate of interest, and this plan is frequently adopted. The single premium allowing for a decrease may be deduced as follows:—

The present value of 1 due at the end of $n+m$ years is $v^{n+m}=v^n \times v^m$. On the assumption of a rate of interest of 3 per cent, decreasing $\frac{1}{4}$ per cent each decade until a minimum of say perhaps 2 per cent is reached, we have for the single premium

$$v^{10}_{(3\%)} \times v^{10}_{(2\frac{3}{4}\%)} \times v^{10}_{(2\frac{1}{2}\%)} \times \ldots$$

the annual premium being obtained by dividing such single premium by

$$a_{\overline{10}|}(3\%)+v^{10}_{(3\%)}a_{\overline{10}|}(2\tfrac{3}{4}\%)+v^{10}_{(3\%)}v^{10}_{(2\frac{3}{4}\%)}a_{\overline{10}|}(2\tfrac{1}{2}\%)+\ldots$$

where $a_{\overline{n}|}=1+a_{\overline{n-1}|}$, being the value of an annuity-due of 1 for n years.

The following are the functions usually tabulated in interest tables:—

(1) $(1+i)^n$, the amount of 1 in n intervals.
(2) v^n, the present value of 1 due at the end of n intervals.
(3) $s_{\overline{n}|}$, the amount of an annuity of 1 for n intervals.
(4) $a_{\overline{n}|}$, the present value of an annuity of 1 for n intervals.

(5) $\frac{1}{s_{\overline{n}|}}$, the sinking fund which will redeem a debt of 1 in n intervals.

(6) $\frac{1}{a_{\overline{n}|}}$, the annuity payable for n intervals which 1 will purchase.

The values in respect of each function are sometimes arranged in columnar form, the following being an example of the table given :—

INTEREST 3 PER CENT.

Interval n	$(1+i)^n$	v^n	$s_{\overline{n}|}$	$a_{\overline{n}|}$	$\frac{1}{s_{\overline{n}|}}$	$\frac{1}{a_{\overline{n}|}}$
1						
2						
⋮						

On the other hand, each function is sometimes kept by itself, the rate of interest being the variable, the following being an example of the table :—

INTERVALS.	AMOUNT OF £1.				
	At Rates per Cent.				
	1	1½	1¼	1⅜	Etc.
1					
2					
3					
4					

Tables giving the values for n years can be employed to obtain the corresponding values for $m + n$ years by means of the following formulas:—

$$(1+i)^{m+n} = (1+i)^m \times (1+i)^n.$$
$$v^{m+n} = v^m \times v^n.$$
$$s_{\overline{m+n}|} = s_{\overline{n}|} + (1+i)^n s_{\overline{m}|}.$$
$$a_{\overline{m+n}|} = a_{\overline{n}|} + v^n a_{\overline{m}|}.$$

LIFE ANNUITIES

An erroneous notion not infrequently met with even at the present day is that in calculating the value of a life annuity the status is represented as a term certain equal to the expectation of life. It can be mathematically proved that the result by this method is always greater than the true value.

A mortality table has been defined as the instrument by means of which are measured the probabilities of life and the probabilities of death. In its final form it represents the experience of a stationary population kept up by births alone, and not disturbed by emigration or immigration.

The method of obtaining the value of a life annuity may in the first place be explained by a numerical illustration. From a certain experience[1]

[1] See *Institute of Actuaries' Text-book*, Part II. p. 496.

we find that out of every 127,283 children born, 1273 survive on the average to age 90, their future experience being as follows:—

871	survive	to	the age of	91
575	„	„	„	92
366	„	„	„	93
222	„	„	„	94
129	„	„	„	95
71	„	„	„	96
37	„	„	„	97
19	„	„	„	98
9	„	„	„	99
4	„	„	„	100
1	„	„	„	101
0	„	„	„	102

Now suppose each one of these 1273 persons aged 90 purchases an annuity, payable yearly, from some public institution, it will be seen from the foregoing table that the institution will be called upon to make annuity payments to 871 persons at the end of the first year, to 575 persons at the end of the second year, and so on until it will be entirely relieved of payment by the end of the twelfth year.

The value of these 1273 annuities is therefore as follows:—

871	discounted	for	1 year
575	„	„	2 years
366	„	„	3 „
222	„	„	4 „

Etc., etc.

The value of any one of the annuities is $\frac{1}{1273}$ of the total value found. It will be here clearly seen, and this is most important, that the value of an annuity is an average quantity, depending on numerous facts, and probably the value found is not the actual value of any one of the annuities, but is the average value of them all.

The principle of averages underlies the calculation of all benefits dependent upon life, the individual is looked upon only as a unit of a class, and the price of the benefits depends upon the experience of that class.

More generally—let l_x denote the number living at age x in the community upon which we are going to base our calculations, l_{x+1} the survivors attaining age $x+1$, etc. (l denoting living, x the age); then if each of these l_x persons purchases a life annuity, the present value of the total amount payable will be

$$vl_{x+1}+v^2l_{x+2}+v^3l_{x+3}+\ \ldots$$

and dividing this by l_x, we have

$$\frac{vl_{x+1}+v^2l_{x+2}+v^3l_{x+3}+\ \ldots}{l_x} \tag{7}$$

as the average value of all the annuities, *i.e.* the value of each. This is denoted by a_x.

If the rate of interest be assumed to be zero, $i=0$, $v=1$, and the formula would become

$$\frac{l_{x+1}+l_{x+2}+l_{x+3}+\ \ldots}{l_x},$$

which is the average future lifetime of the l_x persons, counting only com-

plete years. This is called the Curtate Expectation of Life at age x, and is denoted by e_x (e denoting "expectation").

It is evident that the lower the rate of mortality assumed, the more numerous will be the survivors, the greater the total amount paid, and therefore the greater the annuity value. Similarly a decrease in the rate of interest estimated will increase the value of each of the payments, and hence the annuity value is also increased. It may be mentioned that both of these forces are in operation at the present day, a tendency in the rate of interest to decrease and in the rate of mortality to improve, so that unlike the case of life assurance, where these forces are counteractive, annuity companies are hit from both sides at once.

Dr. Halley was the first in England to employ true principles to the calculation of annuities. In 1693 he read a paper before the Royal Society of London on "An Estimate of the Degrees of the Mortality of Mankind, etc.," in which he gave the Breslau Mortality Experience, the first constructed from real observations.

Even with a mortality experience before us, the difficulty in calculating the annuity values at the individual ages is still an all-important one. It is evident that the method referred to above if applied to every age must involve considerable time and labour. It was with a view to obviate these difficulties that De Moivre studied the subject and conceived his famous hypothesis of equal decrements to human life, which was published in his *Treatise of Annuities on Lives* in 1725. The hypothesis consisted in assuming the number living to be a decreasing arithmetical progression, and to make it fit the tables existing when it was first suggested it was confined to the period of life from age 12 to age 86, the number living at age 12 being assumed to be 74, the numbers living at ages 13, 14, etc., being consequently 73, 72, etc. The value of the annuity at any age was thus simply calculated as follows, general symbols being employed:—

Let l denote the number living at age $x = 86 - x$, then $l_{x+1} = l - 1$, $l_{x+2} = l - 2$, etc.

Therefore

$$a_x = \frac{1}{l}\{(l-1)v + (l-2)v^2 + \ldots + v^{l-1}\}.$$

Multiplying both sides by v and subtracting, we have

$$(1-v)a_x = via_x = \frac{1}{l}\{lv - a_{\overline{l}|}\},$$

and

$$a_x = \frac{l - (1+i)a_{\overline{l}|}}{li}.$$

In 1825 Benjamin Gompertz contributed a paper to the Royal Society having reference to this subject. He therein discussed what would be the effect of assuming the number living at successive ages to be in geometrical progression, and he showed that if such were the case, there would be no assignable limit to the duration of human life, and the values of annuities would be equal at all ages. This latter may be proved as follows:—

Let l denote the number living at age x, then l_{x+1} may be expressed as $= lr$, $l_{x+2} = lr^2$, etc.; hence

$$a_x = \frac{vlr + v^2lr^2 + v^3lr^3 + \ldots}{l},$$

$$= \frac{vr}{1-vr},$$

which is independent of the age.

Gompertz had, of course, to put aside this faulty theory, and his further consideration of the subject led him to believe that by representing the force of mortality as an increasing geometrical progression, a fair representation of human life might be arrived at. The force of mortality (denoted by μ) has been defined as the proportion of persons who would die in a year, if the intensity of mortality remained constant for that period, and if the number of persons under observation also remained constant, the places of those who die being constantly filled up by fresh lives. The advantages that arise from Gompertz's assumption as to the law of mortality will be referred to later.

Returning to formula (7), and multiplying numerator and denominator by v^x, we have

$$a_x = \frac{v^{x+1}l_{x+1} + v^{x+2}l_{x+2} + v^{x+3}l_{x+3} + \ldots}{v^x l_x};$$

denoting the product $v^x l_x$ by D_x, we have

$$a_x = \frac{D_{x+1} + D_{x+2} + D_{x+3} + \ldots}{D_x},$$
$$= \frac{N_x}{D_x}, \tag{8}$$

where we write N_x for the sum of the values of D for ages $x+1$ and upwards. The functions D and N are of themselves meaningless, but in tables used for the calculation of benefits the values are given in columnar form, and are very useful aids to calculation. The symbols have been so described on account of the N and D appearing in the Numerator and Denominator respectively of the annuity value.

In constructing the column D, we multiplied l by a power of v the index of which was the same as the age, but this is not essential. Any other power of v would do equally well, provided that all the values of the function be of identical form.

George Barrett was the first in Great Britain to apply the principle above described to the calculation of annuities. He constructed very extensive tables, which, however, were never printed. He appears to have commenced these about the year 1786. Barrett's principle was to multiply l_x by $(1+i)^{w-x} = (1+i)^w v^x$, where w is the limiting age in the experience. Griffith Davies in 1825 put forward the method first referred to, which was a distinct improvement on Barrett's, as the values are represented by fewer figures.

An annuity deferred n years will be

$$\frac{v^{n+1}l_{x+n+1} + v^{n+2}l_{x+n+2} + \ldots}{l_x},$$

and multiplying numerator and denominator by v^x, we have

$$\frac{D_{x+n+1} + D_{x+n+2} + \ldots}{D_x} = \frac{N_{x+n}}{D_x}, \tag{9}$$

which is denoted by the symbol ${}_n|a_x$, n preceding the bar indicating that the term is deferred.

An annuity temporary for n years

$$= a_x - {}_n|a_x = \frac{N_x - N_{x+n}}{D_x}, \tag{10}$$

which is denoted by the symbol $|_n a_x$, n succeeding the bar indicating that the term is temporary. Another symbol for the same benefit is $a_{x:\overline{n}|}$.

Care must be taken in using commutation tables to ascertain the method by which column N has been obtained. The method of summation described above is known as the Terminal Form. Several writers, notably Farr and Chisholm, have employed what is called the Initial Form by which $N_x = D_x + D_{x+1} + D_{x+2} + \ldots$
and

$$a_x = \frac{N_{x+1}}{D_x}.$$

An annuity payable m times a year will be equal to

$$a^{(m)}_x = \frac{1}{ml_x}\left(v^{\frac{1}{m}} l_{x+\frac{1}{m}} + v^{\frac{2}{m}} l_{x+\frac{2}{m}} + \ldots\right)$$

$$= \frac{1}{mD_x}\left(D_{x+\frac{1}{m}} + D_{x+\frac{2}{m}} + D_{x+\frac{3}{m}} + \ldots\right)$$

The late Sir J. W. Lubbock, Bart., the eminent mathematician, has given (*Philosophical Transactions*, 1829) a very useful formula for approximate summation, which involves the Calculus of Finite Differences. The formula may be used to sum the expression in the brackets, when we will have

$$a^{(m)}_x = \frac{1}{mD_x}\left\{m(D_{x+1} + D_{x+2} + \ldots) + \frac{m-1}{2}D_x + \frac{m^2-1}{12m}\left(\Delta D_x - \frac{1}{2}\Delta^2 D_x\right)\right\}$$

$$= a_x + \frac{m-1}{2m} + \frac{m^2-1}{12m^2} \cdot \frac{\Delta D_x - \frac{1}{2}\Delta^2 D_x}{D_x}. \qquad (11)$$

The usual approximation to the value of an annuity payable m times a year is

$$a_x + \frac{m-1}{2m}.$$

From the more accurate formula given above, it will be seen that the error in using this value is small.

The usual method of obtaining a complete annuity is as follows. On the assumption that the deaths are uniformly distributed throughout the year, one-half of the annuity payment will be payable for the year of death, and will be due at the moment of death. Hence we have

$$a_x + \frac{1}{2}A_x(1+i)^{\frac{1}{2}},$$

where A_x is the present value of 1 payable at the end of the year of death. Similarly, the formula for a complete annuity, payable m times a year, will be

$$a^{(m)}_x + \frac{1}{2m}A_x(1+i)^{\frac{1}{2}}. \qquad (12)$$

To this has been given the symbol $\ddot{a}^{(m)}_x$, the sign ° indicating a "complete" annuity. It may be shown that these additions to the curtate annuities to obtain complete annuities are somewhat excessive.

The tabulation of joint-life annuity values even for two lives involves considerable calculation, on account of the extent of tables required.

Using the same principles as we employed in the case of the single-life annuity, we have

$$a_{xy} = \frac{1}{l_{xy}}(vl_{x+1:y+1} + v^2 l_{x+2:y+2} + \ldots)$$
$$= \frac{D_{x+1:y+1} + D_{x+2:y+2} + \ldots}{D_{xy}}$$
$$= \frac{N_{xy}}{D_{xy}}. \qquad (13)$$

$l_{x+1:y+1} = l_{x+1} \times l_{y+1}$ here denotes the number of unbroken couples remaining at the end of the year out of l_{xy}, original couples at the beginning of the year, and $D_{x:y}$ corresponds to D_x. It may be mentioned that there are two distinct methods of forming column D_{xy} and cognate columns. Either $D_{xy} = v^x l_x l_y$, where x is the elder of the two lives—called Davies' Method—or $D_{x:y} = v^{\frac{x+y}{2}} l_x l_y$, where the power of v is seen to depend on the ages of both the lives—called De Morgan's Method.

If Gompertz's theory as to the Law of Mortality were shown to be accurate, we would have $a_{x:y:z \ldots (n)} = a_w$, where $\mu_x + \mu_y + \mu_z + \ldots = \mu_w$. $a_{x:y:z \ldots (n)}$ signifies that there are n lives in question, and μ_x represents the "Force of Mortality" at age x. But without modification, this theory has failed to represent mortality experience, and this method of obtaining joint-life annuities is of little importance. Thomas Simpson, in the supplement to his work, *Doctrine of Annuities and Reversions*, which was first published in 1852 in his *Select Exercises for Young Proficients in the Mathematicks*, gave a rule, which goes by the name of Simpson's Rule, for finding the value of an annuity upon three lives when tables of annuities upon single and two joint lives are available. This assumed Gompertz's law, and is as follows: "Let A be the youngest and C the oldest of the three proposed lives. Take the value of the two joint lives B and C, and find the age of a single life D of the same value, then find the value of the joint lives A and D, which will be the answer." That is to say, $a_{A:B:C} = a_{A:D}$ where $a_{B:C} = a_D$. This method should, however, only be employed when all the lives are advanced in age.

When the mortality experience has been graduated by Makeham's law, which assumed the first differences of the force of mortality to be in geometrical progression, the rule is as follows: Take $\mu_x + \mu_y + \mu_z + \ldots = n\mu_w$, then $a_{x:y:z \ldots (n)} = a_{w:w:w \ldots (n)}$. Messrs. George King and G. F. Hardy have given a graduation of the Institute of Actuaries Healthy Males Experience upon the basis of this law, and the monetary values in connection therewith are supplied in the *Institute of Actuaries' Text-Book*, Part II. The same gentlemen have also graduated the Carlisle Table of Mortality by this method, and the monetary values are submitted in the *Journal of the Institute of Actuaries*. It may, however, be mentioned that this theory as to the law of mortality does not accurately represent annuitants' mortality experience, although frequently shown to exhibit the mortality experienced by assured lives. It has been suggested in explanation that the mortality of annuitants is disturbed for too large a portion of their experience by the introduction of new entrants, and that annuitants under observation at the younger ages are scarcely equal to the standard of assured lives.

Reverting to formula (7), we have

$$a_x = \frac{vl_{x+1} + v^2 l_{x+2} + v^3 l_{x+3} + \ldots}{l_x}$$
$$= \frac{vl_{x+1}}{l_x} \cdot \frac{l_{x+1} + vl_{x+2} + v^2 l_{x+3} + \ldots}{l_{x+1}}.$$

Now p_x is the probability that a person aged x will live one year, *i.e.*

$$\frac{l_{x+1}}{l_x},$$

$$\therefore a_x = vp_x(1 + a_{x+1}), \tag{14}$$

whence $\log a_x = \log vp_x + \log (1 + a_{x+1})$.

Beginning at the oldest age in the table, when

$$a_x = \frac{vl_{x+1}}{l_x},$$

and working backwards, we can in quite a short time, by means of this formula, obtain a complete table of annuity values. If Gauss's logarithms —under which, if $\log x$ be entered, $\log (x + 1)$ is obtained—are available, the work may be considerably shortened. The method of procedure would be to calculate a preliminary table of $\log vp_x$, and then proceed as follows:—

At the oldest age in the table we have $\log a_x = \log vp_x$.

Enter Gauss's logs, we have $\log (1 + a_x)$.

$\text{Log } a_{x-1} = \log vp_{x-1} + \log (1 + a_x)$.

Enter Gauss's logs, we have $\log (1 + a_{x-1})$.

$\text{Log } a_{x-2} = \log vp_{x-2} + \log (1 + a_{x-1})$.

Enter Gauss's logs, we have $\log (1 + a_{x-2})$, and so on.

Formula (14) simplified enables us to investigate annually the amount of profit or loss from mortality arising in respect of annuity business.

Thus

$$a_x = vp_x(1 + a_{x+1}).$$

Multiplying both sides by $(1 + i)$, we have

$$\begin{aligned}(1 + i)a_x &= p_x(1 + a_{x+1}) \\ &= (1 - q_x)(1 + a_{x+1}) \\ &= (1 + a_{x+1}) - q_x(1 + a_{x+1}).\end{aligned} \tag{15}$$

q_x denotes the rate of mortality at age x, or the probability that a person aged x will die within a year.

Let us assume that all the annuities are payable at the end of the year to annuitants of present age x. The reserve in hand in respect of each annuity (that is, the present value of the future payments) will be a_x. This will have increased through interest by the end of the year to $(1 + i)a_x$, which will be the actual sum held in hand for each. The survivors being aged $(x + 1)$, and a payment of annuity being due, it follows that the amount that should be held in respect of each surviving annuitant, as the equivalent of the future payments, is $(1 + a_{x+1})$. By formula (15) we see that the deficiency between the actual and the required funds in hand is $q_x(1 + a_{x+1})$, which represents the loss to the office in respect of each survivor. On the other hand, we have $(1 + i)a_x$ released in respect of each of these annuitants who have died during the year. From this it follows that a table would require to be computed giving $q_x(1 + a_{x+1})$ in respect of the surviving annuitants, which would be compared with the total of $(1 + i)a_x$ in respect of each of these annuitants who have died during the year, the difference between these two figures representing profit or loss.

Put in another way, $l_x(1 + i)a_x$ will only provide $l_{x+1}(1 + a_{x+1})$, and unless $(l_x - l_{x+1}) = d_x$ die during the year, there will be a loss to the grantors.

On the other hand, if more than d_x die, there will be a profit.

Mortality Experience

The first tables used to any extent in this country were the Northampton Tables, although at this date they have little more than historical interest

There were two tables formed by Dr. Price, the first of which was published in 1771 in his *Observations on Reversionary Payments*, and the second, a more complete table, in 1783, the latter being known as the Northampton Table. In the parish of All Saints, containing the greatest part of the town of Northampton, an account had been kept since 1735 of the ages at which all had died, also an account of the number of males and females that had been christened. There were christened 4220, buried 4689.

If we could find a community which had been undisturbed by emigration or immigration for a generation, and if in that community there had been just as many births as deaths every year, the births always taking place on the same day of the year—say the 1st of January—the formation of a mortality table would be quite a simple matter. Thus, making a census of the population on any 1st January, we would have the following schedule:—

Age.	Number Living.[1]
0	10,000
1	8,461
2	7,779
3	7,274
4	6,998
5	6,797
6	6,676
	Etc.

Now, the 8461 persons living at age 1 represent the survivors out of the 10,000 born one year ago; the 7779 persons living at age 2 represent the survivors to that age out of the 10,000 births that took place two years ago, and so on. Proceeding, we would find that the number opposite any age represents the survivors out of 10,000 births that took place just so many years ago. In other words, we have by a mere enumeration of the population obtained a mortality table.

Or we might have arrived at the same result by a different method. Making an enumeration of the deaths for any calendar year, we would have the following schedule:—

Age (x).	Number Dying between x and $x+1$.
0	1539
1	682
2	505
3	276
4	201
5	121
6	82
	Etc.

Now, the deaths opposite any age in this schedule—say age x—would be the deaths between x and $x+1$ out of the 10,000 births that took place x years ago, and again we would have a mortality table. The "number living column" would be obtained by successively deducting, from the total deaths, those who had died within each respective age interval.

It was this latter method that Dr. Price adopted in the formation of the Northampton Table. He proceeded on the assumption that the population was stationary, the difference between the christenings and the deaths, in his opinion, being accounted for by the deaths amongst persons who immigrated

[1] The figures in these tables are extracted from the Carlisle Experience.

into Northampton at the age of 20. But no population in the world is stationary. It is obvious that many causes of disturbance exist, and it is not possible by either of the above methods to obtain a correct mortality table.

The mortality of All Saints parish was higher than that of the other parishes near, and the table is not to be relied upon. The rates of mortality exhibited by the experience were excessively high, and this led to large profits being made by the early insurance offices, who had founded their rates of premium on this table, and who experienced a much lighter rate of mortality than the table led them to expect.

The Carlisle Table of Mortality, published in 1815, was formed by Joshua Milne, Actuary to the Sun Life Office, from materials contained in a tract published by Dr. John Heysham in 1797. The data forming the experience related to two parishes in Carlisle, St. Mary and St. Cuthbert, and consisted of the numbers living at January 1780 and December 1787, a period of eight years, and the deaths during the nine years 1779-1787. In order to get a comparison, Milne added the two enumerations of the population together and multiplied by four, and deducted one-ninth from the deaths. But the number living at the beginning of the period was 7677, and at the end of the period it was (or was assumed to be) 8677, indicating an increasing population. Hence the deaths in 1779, which Milne desired to deduct, must have been the fewest in the group, arising, as they did, from the smallest population; and in deducting one-ninth of the whole he deducted too many, and accordingly would appear to have under-estimated the rates of mortality all through. Apart from this, and omitting that portion of the investigation relating to infancy for which it would be advisable, where the data will permit, to adopt some such method as that of Professor Pell's (see English Life Experience, No. 3), this table, as a method of forming an experience based on census statistics, is well-nigh perfect, and would repay careful study.

The table, on account of the extensive monetary values that have been based upon it, has possibly been employed more than any other. Even at the present day it is frequently made use of, more especially in connection with involved calculations.

The opinion has often been expressed that a table of mortality based upon census statistics, the period of observation of which dates so far back as 1779, should not receive the consideration bestowed upon it at the present day. But what is frequently overlooked in discussing this question is the fact that the monetary values derived from the Carlisle statistics have been tested with those based upon more theoretical and recent data, and have been found to compare favourably. Mr. G. H. Ryan made valuations of an hypothetical annuity company (described as a model office) by several annuity tables, including the Government Annuitants' 1883 and the Carlisle. The result of his investigation went to show that a valuation by the Carlisle Table represented 96 per cent of the liability exhibited by the Government Annuitants' Experience, which he took as the standard.

The English Life Table No. 3 published in 1864, was formed by Dr. Farr from the census returns of the population of England to the middle of the years 1841 and 1851, and the deaths during the seventeen years 1838 to 1854. This table is usually employed as a basis for calculations connected with population, and is commonly used for the calculation of the premiums for and in the valuation of industrial assurances.

The following table gives the values of annuities at 3 per cent by the various tables already referred to, a column being added, for the sake of

comparison, giving the corresponding values by the Government Annuitants' Experience, No. 3, afterwards referred to:—

Age.	Northampton.	Carlisle.	English Life.		Government Annuitants.	
			Male.	Female.	Male.	Female.
40	14·848	17·143	16·474	17·035	16·376	18·180
50	12·436	14·303	13·424	14·094	13·813	15·271
60	9·777	10·491	10·018	10·527	10·601	11·791
70	6·734	7·123	6·610	7·016	7·299	8·000
80	3·782	4·365	3·919	4·187	4·553	4·937

In 1808 the National Debt Commissioners commenced to grant life annuities, and they applied to Mr. Arthur Morgan, the then Actuary of the Equitable office, to compute tables for this purpose. Unfortunately there was at that time only one English mortality table available, namely, the Northampton Table already described, which had been shown in the case of the Equitable office to be very profitable for the granting of assurances on lives. It never seems to have occurred to the Treasury that, on that very account, such a table must be an unsuitable basis upon which to calculate annuity rates as, to be on the safe side, the most favourable view of mortality should of course be taken. They, however, entrusted to Mr. Morgan the work of preparing, from the Northampton Table, rates for the Government life annuities which they had decided to grant. The annuity rates so calculated continued to be used for the following twenty years, and caused a very great loss to the country, estimated as amounting, during the first eleven years they were in use, to nearly two millions sterling.

In 1819 Mr. John Finlaison was asked to report upon the annuity system of the Government, and in his report he directed the attention of the Chancellor of the Exchequer to the enormous loss caused by granting annuities at the rates then current. He took for his materials the nominees of—

(1) Various English and Irish tontines from 1693 to 1789.
(2) Life annuities issued by the Exchequer from 1745 to 1779; and
(3) Life annuities chargeable on Sinking Fund from 1808 as above.

One of the most important results of his investigation was the marked superiority of female life over male. Tables of annuities were deduced from his results, and employed by the Government. The table is known as the Government Annuity Experience, No. 1.

A second investigation into the mortality experience of annuitants was made in 1860 by Mr. A. G. Finlaison, the Actuary at that time to the National Debt Commissioners, the materials used being the nominees of—

(1) The Irish tontines of 1773-1778.
(2) The English tontine of 1789.
(3) The annuities granted by National Debt Commissioners 1808-1850, in all 28,367 persons, 11,829 of whom were males, and 16,538 females. The results confirmed the fact that female life was superior to male, but not to the same extent as in 1829. These tables were not adopted by the Government, owing possibly to Mr. Finlaison's own suggestion that a further period of years might restore the value of female life to the higher rate indicated by Mr. John Finlaison's tables. The experience of 1860 is known as the Government Annuity Table, No. 2.

The third and most important investigation into the Government experience was made by Mr. A. J. Finlaison, the tables being published in 1883. The data consisted exclusively of the records of the annuities issued from the National Debt Office during the period from 1808 to 1875. The number included was 30,788, of whom 10,929 were males and 19,859 females. It will be readily seen that a person of unsound constitution is not likely to purchase an annuity, and that there is at least a tendency for the most healthy to make such purchases. This option is termed Selection. An analysis of the facts was made to ascertain the effect of such selection, and it was found to be unimportant after four years; that is to say, the rate of mortality at age 50, for example, was very much the same in respect of these annuitants who had purchased at ages 46 and under, but was heavier than that experienced by purchasers at age 47, which in turn was found to be heavier than the rate among the purchasers at age 48, etc. The purchasers at each age were accordingly traced separately for the first four years of their existence (for ages 40 to 80), and thereafter were combined with the experience of the purchasers at all ages. It is seen that the rates of mortality calculated in this experience are given as functions of the duration of the annuities as well as of the age of the annuitants. An experience formed on such a basis is known as a "Select" Experience, and the tables formed therefrom are called Select Mortality Tables. Males and females were again traced separately, and as in the previous investigations, the former were found to indicate heavier rates of mortality than the latter. Very complete tables of single-life annuities for rates of interest from 3 to 5 per cent were published, and joint-life annuity values at $2\frac{1}{2}$, 3, and $3\frac{1}{2}$ per cent interest have since been issued.

The following are examples of the Government annuities granted in consideration of a purchase price of £100. The rate of interest assumed in their calculation is $2\frac{1}{2}$ per cent, the difference between that rate and the rate of interest realised by the Government being assumed to cover the expenses of working. The annuities are payable half-yearly, with proportion to date of death.

Age.	Males.	Females.
40	£5 11 10	£5 0 6
50	6 13 4	6 0 7
60	8 14 2	7 16 5
70	12 10 11	11 9 8

The point has frequently been discussed as to whether the actuaries attached to annuity companies are theoretically correct in adopting the Government data as the basis for the calculation of their annuity rates. The fact that the period of observation over which that experience extended was from 1808 to 1875 should, in itself, be a sufficient deterrent to their employment without further investigation. It is well known that the rate of mortality has continued to improve. This being the case, it would be well to have the death-rate in respect of each generation independently ascertained. Another point worthy of consideration is the undoubted fact that the selection exercised against insurance companies is greater than in the case of the Government. It is not an infrequent occurrence to find a clause in a Will binding the executors to apply so much of the proceeds of the estate towards purchasing from the Government annuities on the lives of old servants and others. And as, in execution of the

trusts, these annuities must be purchased irrespective of the state of the beneficiaries' health, it is seen that the Government will occasionally profit by such transactions. The testator's object in naming Government annuities is to be certain on the point of security.

Annuity companies have been known to increase their rate of annuity in respect of evidence of bad health of annuitants. Apart altogether from its moral aspect, this practice would seem to be very questionable, as selection adverse to the companies must be especially likely to be present. Companies, moreover, are frequently compelled, for the sake of connection, to quote rates for ages calculated by half-years.

It has been found on investigation into the experience of life assurance companies in this country that the rate of mortality differs with the amount of the assurance effected—the greater the sum assured, the lighter the rate of mortality. The average amount of annuity payable in respect of contracts issued by annuity companies must be greater than that in the case of the Government, as apart from other considerations, annuity companies frequently decline to grant an annuity where the periodical payment is below a fixed minimum, say £10. The opinion might therefore be expressed that a somewhat similar result might be found to present itself in the case of annuities, in other words, that the rate of mortality experienced by annuity companies might be expected to be lighter on this account than in the case of the Government experience. In considering the effect of the amount of annuity on the rate of mortality it is well to bear in mind that indescribable force that appears to affect mankind in general and annuitants in particular—that the more man has to lose by death, the more reluctant he is to lose it. Moreover, we should expect it to have some weight in the case of annuitants of means, in that they can afford better to command the best medical skill, and to adapt their place of residence to the current state of their health.

Mr. Meikle made an investigation into the rates of mortality amongst the annuitants of the Scotch life assurance offices. The result of his investigation was to confirm the Government rates as regards males—if anything the office annuity rates of mortality were the heavier—but to indicate an appreciably lighter rate of mortality in the case of females. It was suggested as a result of this investigation that the purchase price at any age in the case of females should be charged on the basis of a life three years younger (*i.e.* x would be charged for a life aged a_{x-3}).

Mr. King's investigation into the rates of mortality prevailing amongst the female nominees of the General Annuity Trust Fund is of special importance. The period over which these observations extended was from 1869 to 1895. The data consisted of reversionary annuities, that is annuities coming into force on the death of lives in existence at the date of purchase—indeed, for the main part annuities purchased by husbands to provide for the lifetime of their widows. These annuities continued only so long as the beneficiaries remained widows, and ceased on their remarriage. Selection on the part of the nominees was *ipso facto* practically excluded. Annuitants withdrawing from the Fund by marriage were held to have withdrawn from the experience as from date of marriage, which might be expected to have the effect of increasing the rate of mortality experienced, healthy lives being more likely to marry than unhealthy. Mr. King found, however, that the actual deaths in the Fund were only about 90 per cent of the number that would have occurred in the Government Annuity Experience, with a similar number of lives under observation. He compared his resulting monetary values with the Select Government Annuity Values, and also with the non-select values, that is the values deduced by

working with age only, and disregarding the function of duration. The monetary values deduced from Mr. King's experience exceeded the Government non-select throughout, and indeed exceeded the select values except at the advanced ages. In this connection the opinion may be expressed that had Mr. King employed "lives" instead of "annuities" in his investigation, the General Trust Fund annuity values might even have exceeded the select throughout.

The French Annuitants Experience may be briefly referred to. The data employed in the investigation extended in its final form to annuities granted by four French companies from 1819 down to the close of the year 1889. The experience was somewhat larger than the Government Annuity Experience, No. 3 (1883). Both in respect of males and females, the rates of mortality agreed very closely with the English Government Experience, and the figures seemed to indicate the conclusion that the same annuity rates might be employed both here and in France. On the other hand, the French Assured Experience indicated distinctly heavier rates of mortality than the English Healthy Males Experience, necessitating an extra of nearly 5 per cent to the premium. We might almost take this as another practical indication of the theory previously referred to, that Government annuity rates are inapplicable to the experience of annuity companies. It may be mentioned that the monetary values of this French experience are based upon a combined male and female mortality table. This method is open to serious criticism in that the factor of sex has an undoubted influence upon annuity rates. Annuities granted upon the lives of females upon the basis of this mixed table must through time result in considerable loss to the companies employing them.

The New Annuity Experience issued by the Institute of Actuaries and the Faculty of Actuaries is of special importance, as it relates entirely to the experience of annuities purchased from life assurance and annuity institutions. The period over which the observations extend is from 1863 to 1893. The particulars of each annuity current at the commencement of the observations in 1863, and of those subsequently granted up to the close of the period, were supplied upon cards, a separate card being written for each annuity, the total of such cards being approximately 9700 for male and 24,300 for female lives.

Examination of the unadjusted statistics, which are alone at present available, would seem to confirm the theory previously discussed, that the Government annuity statistics fail to represent the experience of life-office annuitants, that, in fact, the standard of vitality among office annuitants is greater than that indicated by the Government experience. The following table, based upon the unadjusted data, is extracted from the particulars published:—

SELECT ANNUITY VALUES AT 3 PER CENT

Age.	Males.			Females.		
	New Inst. and Fac. Experience.	Government Experience.	Difference.	New Inst. and Fac. Experience.	Government Experience.	Difference.
40	16·360	16·376	− ·016	18·184	18·180	+ ·004
50	13·867	13·813	+ ·054	15·585	15·271	+ ·314
60	10·862	10·601	+ ·261	12·158	11·791	+ ·467
70	7·313	7·299	+ ·014	8·471	8·000	+ ·471
80	4·530	4·553	− ·023	4·941	4·937	+ ·004

It will be seen that it is chiefly among female annuitants that the difference between the two experiences is most evident, and when it is borne in mind that females constitute about two-thirds of the annuitants, it will be seen that the under-estimation among this section is especially unfortunate to the grantors. The difference between the annuity values would seem to indicate that the office annuity value at any age coincides closely with that of Government Annuity Experience (No. 3) for an age one year younger.

Mortality Investigation of Annuitants

A few notes will be useful on the method which may be suggested for an investigation into the rates of mortality amongst annuitants.

As previously indicated, the period of investigation should be limited; let us say, as in the recent "Institute and Faculty" investigation, to thirty years. Particulars should be inserted on cards of the following form, a separate card being used for each annuitant that comes within the period of the experience:—

ANNUITY NO......

NAME.....

AMOUNT OF ANNUITY, £.....

	D. M.	YEAR.
DATE—		
OF BIRTH	-	
OF ENTRY		
In 1872	-	
OF EXIT	-	
Duration before 1872		
„ at Exit		
Age at Entry		
„ in 1872		
„ at Exit		

MODE OF EXIT (.....)

REMARKS.

An independent investigation should be made into male and female mortality, and for this purpose different-coloured cards should be used. The "Amount" of annuity is suggested for insertion in the cards, with a view to investigate whether the rate of mortality varies with the amount of the annuity. The observations should commence with the anniversary in 1872 of the "Date of Entry" or subsequent entry, and should be terminated with the corresponding anniversary in 1902 or previous exit.

The "Age at Entry" is the nearest age at date of entry, obtained from the dates of birth and entry. The "Duration before 1872" is the difference between 1872 and the year of entry. The "Duration at Exit" depends upon the "Mode of Exit." If the life be "Existing" at the close of the observations in 1902, the duration will be the difference between 1902 and the year of entry. If the mode of exit be "death," the duration will be the integral number of years lived from the date of entry, obtained, of course, from the dates of exit and entry, usually termed the "curtate" duration. The ages in 1872 and at exit are obtained by adding the corresponding durations to the ages at entry.

Annuity rates for any age at purchase should be based upon the experience of entrants at that age. With this object in view, the cards in each section (male and female) should be arranged according to age at entry. Tables thus formed are known as "select" tables.

The next arrangement of the cards is a sub-division according to "Duration before 1872." The cards in each such sub-division should be counted, and their number inserted in column (2) of the following schedule:—

AGE AT ENTRY x—MALES.

Duration.	Survivors. s_x	Existing. e_x	Died. d_x	Exposed to Risk. E_x	Rate of Mortality. q_x
(1)	(2)	(3)	(4)	(5)	(6)

The cards in respect of each age at entry should then be cast, and thereafter arranged according to "Mode of Exit," *i.e.* "Existing" at the close of the observations, and "Died." The cards in each of these groups should be arranged according to "Duration at Exit," and their number counted and recorded in columns (3) and (4) of the schedule opposite the appropriate duration.

The "Exposed to Risk" of mortality at age $x+t$ (x, age at entry; and t, duration) is the number of years of life lived between $x+t$ and $x+t+1$, and is obtained by the following formula:—

$$E_{x+t} = E_{x+t-1} + s_{x+t} - e_{x+t} - d_{x+t-1}.$$

E_{x+t} = Exposed to risk at age $x+t$, column (5).
s_{x+t} = Survivors at age $x+t$, column (2).
e_{x+t} = Existing at close of observations at age $x+t$, column (3).
d_{x+t-1} = Deaths between ages $x+t-1$ and $x+t$, column (4).
$q_{x+t} = \frac{d_{x+t}}{E_{x+t}}$ = Rate of mortality at age $x+t$, column (6).

The rates of mortality thus obtained may be somewhat irregular, depending upon the extent of the data employed. The irregularities should be got rid of by some method of graduation. Having assumed an arbitrary number of entrants at age x, called the radix, successive multiplication by the complements of q—called p, the probability of living—will give us the "number living" column required for the calculation of annuities.

Thus $l_x \times p_x = l_x \times \frac{l_{x+1}}{l_x} = l_{x+1}$, $l_{x+1} \times p_{x+1} = l_{x+2}$, and so on.

A "Select" mortality investigation would only in general be made for quinquennial ages at entry, the data at the intermediate ages being included

in the nearest quinquennial group. The annuity values at these intermediate ages would then be obtained by means of interpolation.

If it be decided to base the annuity values for any age upon the experience of the entrants at that and all other ages—called an "aggregate" experience—the method would be as follows.

Where more than one annuity has been issued to the same nominee, the duplicate cards would require to be eliminated. The reason for this is most obvious in the event of such a life dying at an old age, when it would be counted as two or more deaths according to the number of annuities effected, thus over-estimating the rate of mortality at these old ages. In other words, "Lives" should be employed as opposed to "Annuities."

Group the cards into "New Entrants" and "Survivors," that is, according to whether the annuities were effected subsequent or previous to 1872. The former would then be arranged according to "age at entry," the latter according to "age in 1872," and the numbers should be counted and tabulated in columns (2) and (3) of the following schedule:—

ANNUITY EXPERIENCE—MALES

Age.	New Entrants.	Survivors.	Existing.	Died.	Exposed to Risk.	Rate of Mortality.
(1)	(2)	(3)	(4)	(5)	(6)	(7)

The cards should then be cast and arranged into "Existing" and "Died." The cards in each of these sub-divisions should be grouped according to age at exit, and the numbers counted and recorded in columns (4) and (5) of the schedule.

The formula for the "Exposed to Risk" will be—

$$E_x = E_{x-1} + s_x + n_x - e_x - d_{x-1},$$

and

$$q_x = \frac{d_x}{E_x}.$$

We should then proceed as before to form our mortality table from which the annuity values would be obtained.

A method occasionally made use of for comparing the experience with standard tables is to multiply the "Exposed to Risk" column (6) by the rates of mortality of the standard table. This will give the expected deaths according to the standard table, which should then be compared with the actual deaths experienced. This method was effectively made use of by Mr. King in his "General Annuity Trust Fund" investigation already referred to.

It was stated that select tables should in all cases form the basis for the calculation of annuity-rates, and that in any investigation into the mortality among annuity nominees it would be desirable to have such tables for at least quinquennial ages at entry. The extent of the monetary tables required under these conditions is an objection to the principle, and the method usually adopted is to join the select rates of mortality to an ultimate experience after a term of years that depends upon the observations. Examination of the select tables may indicate that after a period, say ten

years, selection becomes somewhat unimportant—in other words, that the rate of mortality amongst annuitants of present age, say sixty, is practically the same in respect of entrants at ages fifty and under. The method thereupon adopted is to form an "aggregate" mortality table in the manner described, but neglecting the experience of the first ten years after entry. The select rates of mortality are then deduced in respect of each age at entry for the first ten years, and thereafter the rates of mortality assumed are these of the aggregate experience.

It is obvious that if the same radix be selected for each age at entry, the extent of the monetary tables will not be reduced. The method adopted, however, is as follows—

A table of the number living is deduced in respect of the ultimate experience, and monetary values calculated in connection therewith. Dividing l_{x+10} by $p_{[x]+9}$ (the brackets indicate the age at entry), we have

$$l_{x+10} \times \frac{l_{[x]+9}}{l_{x+10}} = l_{[x]+9}.$$

Similarly, the division of $l_{[x]+9}$ by $p_{[x]+8}$ will yield $l_{[x]+8}$, and so on to $l_{[x]}$.

The monetary values in respect of these select values will then be calculated and employed in conjunction with the ultimate.

Assurance companies pay some £700,000 per annum by way of annuity payments to their annuitants. The Government figure is about £1,000,000. These two items, however, bear quite a small proportion to the total paid in annuities throughout the country, as a large amount of property is held in life-rent only, and widows' funds and similar institutions must not in this connection be overlooked.

The opinion has been expressed that annuity companies should issue separate tables of annuities applicable to damaged lives—in other words, that the theory of rating up lives for assurance (which of course increases the premium) should be extended to the granting of annuities. As a counter proposal we may mention the suggestion that the family history of annuitants should be examined, and if found to indicate extreme longevity, the parties proposing should be rated down accordingly.

In considering the first portion of this problem, that potent factor termed selection should be carefully kept in view. Lives rated up for assurance have always this advantage over their judges, that they can accept or decline the terms which are offered to them, and a proportion only of such lives accept the terms proposed. Moreover, the necessity for being assured should appeal more strongly to defective lives, as such lives have frequently no other means of leaving a substantial provision for their families. It is doubtful, too, if the principle could ever be applied to annuities with satisfaction to both parties, as apart from other objections it would require a large number of entrants to bring the system of averages into full play; and without averages suitable rates could not be calculated. It is questionable if anything can counterbalance the selection exercised by annuitants.

Much has yet to be written upon the subject of extra mortality. If we had two mortality tables side by side, the one representing the experience of say 10,000 select lives, the other based upon the experience of 10,000 damaged lives of the average age at entry of annuitants, a comparison of these two tables would, no doubt, yield exceedingly interesting results. While much would probably depend upon the incidence of the extra mortality to which the lives were subject, the opinion may be expressed that the damaged lives would for some years be subject to higher rates of

mortality than the select, but after a period would exhibit even lighter rates of mortality than the normal experience. The old argument of the survival of the fittest would seem to be especially applicable here, coupled with the fact that such lives would be aware of their deficiencies, and consequently more likely to exercise especial care in that direction. To assume that such lives would be subject to an increasing extra mortality, small at first but rapidly increasing, which is the assumption involved in rating up the age, would not in the majority of cases be consistent with fact.

In any event, companies would never be justified in carrying out to the full the plan under discussion, as it must be borne in mind that the tables upon which annuities are based refer to the general experience of annuitants, and that the withdrawal of a portion of the experience to which the experience is inapplicable would tend to make the remaining portion inapplicable also. Moreover, the question of extra expense would not require to be overlooked. One of the present safeguards of annuity business is that the expenditure is very small indeed in comparison with that in regard to life assurance.

Annuities depending upon Life and other Contingencies

Annuities sometimes depend not only upon a life or combination of lives, but upon some other contingency, such as that in the event of the remarriage of the nominee the annuity payments are to cease. The calculation of such annuities is somewhat difficult, in so far as we have to give effect to a contingency that depends upon the human will. The deduction of rates of remarriage or withdrawal is similar to the investigation of rates of mortality. Great care has, however, to be exercised in employing such rates, as the past experience is not always a true forecast of the future. This portion of our subject is rendered important by the charge levied by assessment companies, *i.e.* companies in which the rate of premiums varies according to the mortality experienced, against the level premium companies, that they (the level companies) fail to give effect to the lapse element in deducing their premiums for life assurance. It must be remembered, however, that level premium companies as a rule make a payment to those who withdraw of the surrender value of their policies. Companies cannot, of course, both pay surrender values and in calculating premiums allow for any profit from withdrawal. The rate of withdrawal may very properly be allowed for in the calculation of premiums for and in the valuation of friendly societies, where it might be thought to be uniform, or in the case of clerks' associations, where withdrawal may be compulsory on a member ceasing to be a clerk.

Some of the methods that have been suggested for the calculation of annuities giving effect to withdrawal may be briefly referred to. It will be necessary in the first place to form from the experience of the Fund a table giving the rates of mortality and withdrawal at each age. The rate of mortality (denoted by q_x) may be defined as the probability that a person aged x will die within a year, and is deduced by comparing the deaths between ages x and $(x+1)$ with the number living at age x. The rate of withdrawal at age x—denoted by $(wq)_x$—is the corresponding function for withdrawal.

The first method that will be referred to is this. We will follow, throughout, the experience of say 10,000 entrants at age 20. If we multiply 10,000 by q_{20}, the probability that a person aged 20 will die within a year, we will get the number of deaths between 20 and 21

(denoted by d_{20}); and similarly, if we multiply the 10,000 by $(wq)_{20}$, we will get the withdrawals between the same two ages, denoted by w_{20}. Deducting the sum of these two decrements from the original entrants, we will get the number remaining on the books at age 21. This figure will fall to be multiplied successively by q_{21} and $(wq)_{21}$ to get the deaths and withdrawals respectively between 21 and 22, and deducting the sum of these two decrements from the survivors to age 21, we have the corresponding number remaining at age 22, and so on to the end of the experience.

This method would obviously only be accurate on the assumption that the deaths and withdrawals occur at the end of the year, and we must accordingly endeavour to modify our method of calculation to allow for this.

The following are the particulars required:—

Age.	Survivors.	Deaths.	Withdrawals.	Total Decrement.
20				
21				
22				

The rate of mortality at age x is deduced upon the assumption that there are no withdrawals from the experience within the year, and similarly in the deduction of the rate of withdrawal it is assumed that there are no deaths, or rather that the deaths are immediately replaced by new entrants of the same age. For our present purpose we require the rate of mortality between any two ages giving effect to withdrawal, and similarly the rate of withdrawal giving effect to the death-rate. Making the assumption that the deaths and withdrawals are uniformly distributed throughout each year of age, we have as the amended probability that a person aged x will die within the year, giving effect to withdrawal,

$$q'_x = q_x - \tfrac{1}{2}(q_x \times (wq)_x),$$

that is to say, it is the probability that he will die throughout the year, less the chance that he will withdraw and then die. Similarly, the rate of withdrawal, giving effect to mortality,

$$(wq)'_x = (wq)_x - \tfrac{1}{2}(q_x \times (wq)_x),$$

that is to say, we must deduct from the rate of withdrawal the chance that he might die throughout the year, and thus lose the opportunity he possessed of withdrawing voluntarily. The probability that a person aged x will either die or withdraw throughout the year is therefore

$$q'_x + (wq)'_x = q_x + (wq)_x - q_x \times (wq)_x.$$

A table such as that desired can be simply calculated as previously described, using the amended rates of mortality and withdrawal referred to in this note.

The last method that we will discuss proceeds on the assumption that we possess tables of the central death-rate, denoted by m_x, and the central withdrawal rate, denoted by $(wm)_x$. The central death-rate at age x may be defined as the ratio of the deaths between x and $x+1$ to the number alive at the middle of the year, and similarly with the central withdrawal rate.

Let d and w denote the number of deaths and withdrawals between any

two ages, and l the number living at the beginning of the year. Then making the assumption of a uniform distribution of deaths and withdrawals throughout the year, we have the number remaining on the books at the middle of the year equal to

$$l-\tfrac{1}{2}(d+w).$$

But by definition we have the central death-rate

$$m=\frac{d}{l-\frac{1}{2}(d+w)},$$

and

$$(wm)=\frac{w}{l-\frac{1}{2}(d+w)}.$$

Now, as already stated, we are assumed to possess complete tables of the functions m and wm, and solving for d and w, the two unknown quantities, we have

$$d=\frac{lm}{1+\frac{1}{2}(m+(wm))},$$

and

$$w=\frac{l(wm)}{1+\frac{1}{2}(m+(wm))},$$

and

$$l_{x+1}=l-d-w=l\times\frac{1-\frac{1}{2}(m+(wm))}{1+\frac{1}{2}(m+(wm))}.$$

Having from the experience of the society prepared complete tables of the central death-rate and the central withdrawal rate, we proceed to multiply the 10,000 by

$$\frac{m}{1+\frac{1}{2}(m+(wm))},$$

which gives the deaths between 20 and 21. Similarly, we multiply 10,000 by

$$\frac{(wm)}{1+\frac{1}{2}(m+(wm))}$$

to get the withdrawals between the same ages. Deducting the sum of these two decrements from the 10,000, we get the survivors to age 21, which should be checked with

$$10{,}000\times\frac{1-\frac{1}{2}(m+(wm))}{1+\frac{1}{2}(m+(wm))}.$$

Continuing thus to the end of the experience, we will get the particulars to enable us to complete the schedule required. This last method is the one that should be advocated for adoption.

The values of the annuities are simply calculated when we possess a table such as is here described, the method being identical with that referred to in the chapter on life annuities, the column Survivors being used for the purpose.

It is not proposed here to more than refer to one or two practical difficulties in connection with this subject. As is very well known, the rate of remarriage among widowers depends not only upon the age of the individual, but also upon the number of years that he has been a widower. While after a number of years the rate of remarriage among widowers might be assumed to be the same irrespective of the ages at which they

became widowers, this is not the case until some years have elapsed since they became widowers; and it would be necessary to form the tables referred to on the principle of select tables, joining them on to the aggregate experience after a period which would depend upon the experience. Similarly with the rate of withdrawal, which is also a function depending upon two varying quantities, age and duration of contract; and, except in the case of service funds, where it is compulsory when entering the service to become a member of the fund and to remain so while in the service, it would seem to be more a function of the duration than the age. In passing, we may remark that an undue amount of importance would sometimes appear to be attached to the deduction of the rate of withdrawal among life assurance companies. The rate of mortality in all well-managed life assurance institutions is fairly uniform, but not so the rate of withdrawal, which depends upon such variables as the class of assurance, the sum assured, the method of obtaining new business, the management of the company at any particular time, and so on. Hence the investigation of rates of withdrawal based upon the experience of a group of companies, and taking into consideration all classes of assurance, would seem to be no guide whatever to the rate of withdrawal in any individual case or in any other experience.

Life Interests

When a person is entitled to the income of settled property for life, he is said to possess a life interest in the property, and is called the life tenant. A life interest, therefore, is a benefit of the same nature as an annuity, the difference being that in the one case the income may possibly vary from time to time, while in the other case it is fixed.

The method of arriving at the value for purchase of a life interest of 1 per annum is as follows:—

Let P'_x denote the annual premium which an assurance office would charge for a non-profit life assurance of 1. This assurance must not be burdened with detrimental conditions as to travel, occupation, etc. Then for an annuity-due of $P'_x + d$ a purchaser could afford to lay out 1, because d would provide the interest in advance on the outlay, being equal to $1 - v = 1 - \frac{1}{1+i} = \frac{i}{1+i} = iv$, the present value at the beginning of the year of the interest on 1 due at the end of the year, and the premium paid to the assurance office would allow of the return of the capital invested when the annuity ceased to be exigible.

For an annuity (in contradistinction to an annuity-due) of $P'_x + d$ the purchase price would accordingly be $1 - (P'_x + d)$, and by simple proportion for a life interest of 1 we would have

$$\frac{1}{P'_x + d} - 1$$

for the purchase price; d would be taken at the rate of interest it is intended to realise, say from 4 to 5 per cent, depending, among other things, upon the amount of the life interest. A whole-life policy would require to be effected for a sum assured of $\frac{1}{P'_x + d}$.

We previously remarked on this feature connected with annuities, which differentiates them from all other investments, that the capital invested is not returnable when the annuity payments cease. In the granting of life annuities this principle does not fall to be considered, as, always provided

the table of mortality and the rate of interest assumed be correctly chosen, the theory of averages will enable the transactions to work themselves out, and the margin which is always allowed to provide for expenses and contingencies should permit of some profit on the transaction to the grantors. The case of the investor is different. To him there are two options: either to spend the entire income during the lifetime of the nominee, or to set aside so much of it at the periodic intervals to make provision for the return of the capital invested when the annuity payments cease. We see this principle illustrated in some of the schemes put forward by life assurance companies, such as the following:—

Sum to be invested	£
Deduct single premium to provide for the return of the capital invested as above	
Leaving	£

to be invested in the purchase of an annuity. The rate of interest realised under this scheme averages nearly 3 per cent.

To the investor in reversionary securities the view from which the life interest is looked at corresponds with the method by which the value is arrived at. We have seen that the value of the life interest is equal to

$$\frac{1}{\overline{P'}_{x+d}} - 1,$$

which may be put in the form $\frac{v - \overline{P'}_x}{\overline{P'}_{x+d}}$

This may be termed the *amount paid to the vendor.*

Add to this the first premium on the policy which is required to protect the security, and which would fall to be paid to a life assurance company, $\frac{\overline{P'}_x}{\overline{P'}_{x+d}}$

and we have the *capital invested* equal to . . . $\frac{v}{\overline{P'}_{x+d}}$

The amount paid at the end of each year is unity, which would be looked upon as

Premium	$\frac{\overline{P'}_x}{\overline{P'}_{x+d}}$
One year's interest on capital invested . .	$\frac{iv}{\overline{P'}_{x+d}} = \frac{d}{\overline{P'}_{x+d}}$
Total	1

and will be so treated in the investor's records, a whole-life policy being effected on the life of the life tenant for . $\frac{1}{\overline{P'}_{x+d}}$

At the death of the life tenant the amount assured will be payable, and will be treated thus:—

To repayment of amount invested	$\frac{v}{\overline{P'}_{x+d}}$
Interest for past year	$\frac{d}{\overline{P'}_{x+d}}$
Total	$\frac{1}{\overline{P'}_{x+d}}$

A reversionary life interest differs from an immediate life interest in that no income is payable to the reversioner, *i.e.* the person entitled to the life interest on the death of the life tenant, so long as he (the reversioner) survives jointly with the life tenant. Where $a'_{y|x}$ represents a reversionary life interest of 1, payable to x after the death of y, we have, by deducting

an annuity of the income from the formula for the ordinary life interest

$$a'_{y|x} = \frac{1}{P'_x + d} - (1 + a_{xy}).$$

Mr. Jellicoe, a well-known writer on this subject, suggested that a_{xy} should be the Carlisle 3½ per cent annuity, and that d should be taken at 5 per cent.

The difference between a life interest in possession and a reversionary life interest can more easily be understood from a book-keeping account. Thus we have, in the case of the reversionary life interest:—

Amount paid to vendor as above . . .	$\frac{1}{P'_x + d} - (1 + a_{xy})$
First premium required to protect security . .	$\frac{P'_x}{P'_x + d}$
Value of annuity purchased to provide for the premiums on the policy and interest on the capital invested until the life interest falls in . .	a_{xy}
Total capital invested	$\frac{v}{P'_x + d}$

So long as both lives survive jointly, we have 1 paid at the end of each year from the annuity which has been purchased. This will be treated as follows:—

Premium	$\frac{P'_x}{P'_x + d}$
One year's interest on capital invested . .	$\frac{d}{P'_x + d}$
Total	1

If the reversioner survive the life tenant, 1 will be paid at the end of each year from the life interest, and will be treated as above.

At the death of x the amount assured will be payable, and will be dealt with as in the case of the life interest.

The purchase of life interests and reversions, and lending on their security, are a favourite class of investment with life assurance companies. They combine security with a good rate of interest, as they are rather unsuitable for private investors, and at the same time enable the companies to make their investments aid their life assurance business.

The rate of mortality experienced by life tenants has not so far been the subject of a distinct mortality investigation of any great magnitude. Mr. Neil Campbell, in a supplement to a paper on the subject of life interest and reversions, recently read before the Faculty of Actuaries (*Transactions*, vol. i. No. 4), showed that the Carlisle Table, possibly the most frequently used in this connection, did not accurately represent the rates of mortality experienced among life tenants. He showed also that, in the small investigation he made (which related to one insurance society), even the New Annuity Experience already referred to indicated higher rates of mortality than the life tenants are subject to, their experience apparently comparing favourably with that of the Peerage Females. These comparisons are interesting, but Mr. Campbell's figures are based upon scanty facts, and he does not attach too much importance to them. One point, however, is clear—that we should have a complete investigation into the mortality among life tenants. There is sufficient data within the records of insurance

companies to enable this to be done, and the results would be of great value. At present either the Carlisle Table or the Government Annuitants Experience 1883, is usually employed, and it would be most interesting to have the actual experience compared with the assumed.

Those desiring to pursue the subject of annuities further will find much valuable information upon the subject of annuities-certain in the first part of the *Institute of Actuaries' Text-Book*, and in Mr. George King's *Theory of Finance*, and with reference to life annuities and life interests in Part II. of the text-book referred to. The *Journal of the Institute of Actuaries* contains several valuable papers bearing on annuity experiences, and a reference to the index would enable the reader to obtain any further information required. W. A. ROBERTSON.

Applied for.—This phrase very often appears in prospectuses with the intention, no doubt, of leading investors to believe that the shares offered will be a good investment. The offer to take shares which are said to be already "applied for," may be withdrawn, and therefore this statement should not be regarded by an investor in judging the merits of the investment.

Apportionment.

INTRODUCTION AND DEFINITIONS 93
APPORTIONMENT AT COMMON LAW 93
APPORTIONMENT BY STATUTE—
I. UNDER THE APPORTIONMENT ACTS 94
1. *What Payments are Apportionable* 96
i. *Bonus Dividends; Payments not strictly Periodical* . 96
ii. *Profits of a Private Partnership* . . . 96
iii. *Assurance Premiums* 97
iv. *Dividends and Interest accrued at Death* . . 97
v. *Rents on Realty specifically devised* . . . 98
vi. *Interest and Dividends on Personalty specifically bequeathed* 98
vii. *Dividends accrued on Stocks sold or purchased by Trustees* 98
viii. *Dividends generally and Interim Dividends* . . 99
ix. *Tithes* 99
2. *Act does not apply where contrary Stipulation* . . . 100
3. *The Circumstances to which the Act applies* . . . 101
4. *By whom the apportioned Part is recoverable, and when* . 102
5. *Income apportionable is Net, not Gross Income* . . 102
II. UNDER VARIOUS STATUTES 102
List of Statutes dealing with Apportionment . . . 103
EQUITABLE APPORTIONMENT 105
Apportionment as between Tenant for Life and Remainderman . 106
The Rule as to Conversion of Personalty 107
Duties and Liabilities of Trustees as to Conversion . . . 108
Variation of the Rule as to Conversion, according to the Nature of the Investments 108
I. RULES OF APPORTIONMENT ARISING OUT OF THE APPLICATION OF THE RULE AS TO CONVERSION—
i. *Where the Investments are of an authorised Nature* . 109
ii. *Where the Investments are unauthorised, but of a Kind immediately convertible* 110
iii. *Where unauthorised Investments produce a large Income, and Conversion is delayed* 110
iv. *Where unauthorised Investments are Non-productive and not advantageously Saleable* 110

II. Rules of Apportionment where a Mortgage Security proves insufficient on Realisation 111
III. Apportionment on a Deficiency of Assets 112
IV. Apportionment in respect of Dividends accrued on Stocks purchased or sold by Trustees 112
Examples of Apportionment 120
The Use of Interest Tables in calculating Apportionments . 122

Apportionment is a dividing and assigning of a just and equitable portion to each person interested or entitled to participate in any claim, right, property, or charge (*Century Dictionary*).

A familiar example of apportionment is the one now (*i.e.* since the Apportionment Acts) made in executorship accounts, by which dividends received after the death of the testator, for a period which fell partly in his lifetime, are divided or apportioned—the proportion accrued to the date of the death being treated as capital and the balance as income.

The law relating to apportionment is generally treated under the headings of apportionments in respect of time and apportionments in respect of estate; it has, however, been deemed advisable in this article to treat the subject under the respective headings of

Apportionment at Common Law,
Apportionment by Statute,
Apportionment in Equity, or Equitable apportionment,

as to the writer this appears the most convenient and most logical order of stating the law.

A very considerable portion of the law relating to apportionment, besides being of a highly technical nature, deals with cases of a kind altogether outside the province of an accountant; notably many of the apportionments in respect of estate, *e.g.* the apportionment on a partition being made between joint-tenants. Such apportionments are more matters for conveyancing counsel than for accountants, and for that reason are not dealt with here; the aim of this article being to state the law of apportionment so far as it deals with points that are likely to be presented to an accountant in the course of actual practice; and, if not in all cases to enable him to settle such points, to put him sufficiently on his guard, so as to prevent him making apportionments which, whilst probably seeming to be in accordance with common sense, are *not* in accordance with the law as settled by the Courts.

Apportionment at Common Law

At common law there is no apportionment with respect to time—that is, no apportionment between persons having *successive* interests in the subject matter, the reason, as laid down in Cluns' case (Coke's *Reports*, 1826 edition, vol v. p. 478), being, that until the rent day nothing was due or payable, and that therefore the whole rent went to the person entitled to the property on the day of payment, however recent his title, and nothing went to the estate of his predecessor.

The common law applied to all periodical payments except interest on money. With respect to interest the law is well stated in an old case: "Interest being due *de die in diem* is not one entire thing, but is an aggregate of many distinct things; it is obvious, therefore, that the representa-

tives of a party dying before the day at which interest was usually payable would be entitled to interest up to the time of the party's death" (*Edwards* v. *Countess of Warwick*, 1723, 2 P. Wms. 176).

The common law with respect to the apportionment of periodical payments has, however, been considerably modified by statute, and the law as it now stands is dealt with separately in the section dealing with apportionment by statute.

The only apportionment (except apportionment of interest on money) recognised by the common law is apportionment between persons having *contemporaneous* interests in the subject matter, or, as it is often called, "apportionment in respect of estate," *e.g.* if the reversion to the fee-simple of an estate let on lease is, by act of parties or otherwise, partitioned, so that the reversion in fee becomes vested in several owners, then each of such owners is entitled to an apportioned part of the rent issuing from the whole estate proportionate to his respective interest.

Apportionment with respect to estate is not a matter of calculation, but a matter of arrangement between the parties, or, in case of disagreement, for judicial decision, arrived at after consideration of all the circumstances, but mainly of the respective *value* that each apportioned part bears to the whole. It is a highly technical subject, and (as explained) one that is more proper for the consideration of conveyancing counsel than for accountants, and for this reason is not dealt with in this article as being outside the scope of the present work.

Apportionment by Statute

I. Apportionment of Periodical Payments in respect of Time under the Apportionment Acts.—At common law periodical payments (as explained) are not apportionable with respect to time; that is, where a successor in interest succeeds before a rent or other periodical payment falls due he takes, at common law, the whole, and the executors of his predecessor take nothing. For example, suppose a tenant for life of an estate, the rents of which are payable on the 25th of December, died on the 24th of December, at common law the remainderman would have taken the whole of the rents, and the estate of the deceased tenant for life nothing, although (supposing the rents to be half-yearly rents, and therefore accrued since June 24th) 183 days of the rent accrued in the lifetime of the tenant for life, and only one day's rent in the lifetime of his successor in interest.

Interest on money lent is an exception to the common law rule, as this has always been apportionable at common law in respect of time.

Owing to the injustice and grave inconvenience caused by the operation of the common law rule against apportionment of periodical payments, various statutes have been passed modifying the common law, namely,—2 Geo. II. c. 19, sec. 15; 4 and 5 Will. IV. c. 22; 33 and 34 Vict. c. 35.

The last of these Acts, "The Apportionment Act of 1870" (33 and 34 Vict. c. 35), while it does not in terms repeal the previous Acts, yet practically supersedes them, and owing to its importance a summary of its main provisions is given below:—

33 AND 34 VICTORIA, CHAPTER 35

An Act for the better apportionment of rents and other periodical payments (1st August 1870).

Preamble

Whereas rents and some other periodical payments are not at common law apportionable (like interest on money lent) in respect of time, and for remedy of some of the mischiefs and inconveniences thereby arising, divers statutes have been passed, etc.

It is enacted as follows:—

Sec. 1. This Act may be cited for all purposes as "The Apportionment Act, 1870."

Sec. 2. From and after the passing of this Act all rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise), shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

Sec. 3. The apportioned part of any such rent, annuity, dividend, or other payment, shall be payable or recoverable in the case of a continuing rent, annuity, or other such payment, when the entire portion, of which such apportioned part shall form part, shall become due and payable, and not before, and in the case of a rent, annuity, or other such payment, determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not been so determined, and not before.

Sec. 4. All persons and their respective heirs, executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interests determine with their own deaths, shall have such or the same remedies at law and in equity for recovering such apportioned parts as aforesaid when payable (allowing proportionate parts of all just allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively; provided that persons liable to pay rents reserved out of or charged on lands or other hereditaments of any tenure, and the same lands or other hereditaments shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically; but the entire or continuing rent, including such apportioned part, shall be recovered and received by the heir or other person who, if the rent had not been apportionable under this Act, or otherwise, would have been entitled to such entire or continuing rent; such apportioned part shall be recoverable from such heir or other person by the executors or other parties entitled under this Act to the same by action at law or suit in equity.

Sec. 5. By this section in the construction of the Act, the word "*rents*" includes rent service, rent charge, and rent seck, and also tithes and all periodical payments, or rendering in lieu of or in the nature of rent or tithe.

The word "annuities" includes salaries and pensions.

The word "dividends" includes (besides dividends strictly so called) all payments, made by the name of dividend, bonus, or otherwise out of the revenue of trading or other public companies, divisible between all or any of the members of such respective companies, whether such payments shall be usually made or declared at any fixed times or otherwise; and all such divisible revenue shall, for the purposes of this Act, be deemed to have

accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue shall be declared or expressed to be made, but the said word "dividend" does not include payments in the nature of a return or reimbursement of capital.

Sec. 6. Nothing in this Act contained shall render apportionable any annual sums made payable in policies of assurance of any description.

Sec. 7. The provisions of this Act shall not extend to any case in which it is or shall be expressly stipulated that no apportionment shall take place.

To properly understand the Apportionment Act, it is necessary to consider it along with the various interpretations that have been given to its provisions by the Courts; and in the notes below all the leading cases are carefully dealt with and commented on.

For convenience of reference the notes are grouped under appropriate headings.

1. WHAT PAYMENTS ARE APPORTIONABLE.—Section 2 defines the payments to which the Act applies, *i.e.* all rents, annuities, dividends, and other periodical payments, and interest on money lent; this latter, however, as the section shows, was apportionable irrespective of the Act.

By section 7 it is provided that the word "annuities" includes salaries and pensions, and by the same section an exhaustive definition is given of the word "dividends."

In considering these sections the following points must, however, be carefully borne in mind:—

(i.) *Bonus Dividends; Payments not strictly Periodical.*—The word "dividends" in the Apportionment Act, 1870, includes payments by way of bonus or surplus profits to the shareholders of a public company, though such payments may be not strictly periodical; as for instance where the payment is made under the deed of settlement of a life insurance society, providing for a distribution of a bonus or surplus profits among its shareholders once in every five years (*in re Griffith: Carr* v. *Griffith*, L. R. 12 Ch. D. 655).

(ii.) *Profits of a Private Partnership.*—It has been decided that the profits of a private business are *not* apportionable under the Act. This point has been decided on two different grounds: (1) That the words "trading or other public companies" in section 5 of the Apportionment Act of 1870 do not include a private partnership (*in re Griffith, supra*). (2) That the profits of a private business are neither "rents, annuities, nor periodical payments" within the meaning of the Apportionment Act, and that consequently that Act does not apply, and therefore there can be no apportionment of such profits.

It must be pointed out that the question of apportionment of the profits of a private business does not arise on the dissolution of a partnership, by the death of a partner or otherwise, that is, as between a retiring partner, or the estate of a deceased partner, and the continuing partners; the question usually arises in cases where a business is carried on by trustees, and does not raise the question of the division of profits as between partners, but usually as between the estate of a deceased *beneficiary* and the beneficiary taking the benefit in succession to such deceased beneficiary.

Thus in the case of *in re Cox's Trusts* (1878 L. R. 9 Ch. D. 159) the facts were as under: a testatrix bequeathed a newspaper to trustees upon trust to continue the publication thereof so long as they thought fit, and to pay one-fourth of the net profits to J. C. during his life, and after his death to X. for her life. On the 23rd December 1877 J. C. died, and the question was

whether between the estate of J. C. and X. there was to be any apportionment of a fourth share of the six months' profits to December 31, 1877. It was held that there could be no apportionment of profits of a business (see above), and that as upon the construction of the will the person to take a share of the profits must be living at the time when it was ascertained that there were profits to be divided, X, the successor in interest, was entitled to the whole fourth of the half-year's profits, although her interest had only existed during eight days of the period (Dec. 23 to Dec. 31) during which the profits were earned.

Sometimes another point is raised. Thus, where, under the provisions of the deed of partnership, the death of a partner does not act as a dissolution, but such partner has a testamentary power of nominating a successor to his share, and by his will exercises such power of nomination, the point raised is whether such successor, on the next division of profits, takes the whole of the share, or whether such profits must be taken to accrue *de die in diem*, and the estate of the deceased partner be held to be entitled to the proportions that (in such case) must be taken to have been earned in his lifetime. This was the point decided in the case of *Jones* v. *Ogle* (L. R. 14 Eq. 419; 8 Ch. 192). A testator bequeathed the dividends of his share and interest in the L. Iron Company to A. for life, and after A.'s death to his daughter absolutely. The testator died in October 1870. The L. Iron Company was a private trading partnership regulated by a deed of partnership, under which the accounts were made up in the January of each year, and the profits of the previous year ascertained, which account was settled and signed by all the partners. The managing partner then decided what dividend should be paid to the partners, and the dividend was paid by instalments in the next few months. It was held (and confirmed on appeal) that the dividend in respect of the profits realised during the year 1870 (ten months of which were earned in the testator's lifetime), which was declared in January 1871, was not a "dividend" or a "periodical payment" within the 2nd section of the Apportionment Act 1870, and was not apportionable, and that the whole belonged to A.

Although, as stated, profits of a private partnership are not apportionable, yet it was decided, in the case of *Ibbotson* v. *Elam* (1865, L. R. 1 Equity Cases, 189), that interest on a partner's capital is apportionable. The Master of the Rolls, in giving judgment (after dealing with the question of profits), said, "With regard to interest, however, the case is different. Interest accrues *de die in diem*, and there is no uncertainty as to the amount of interest which has accrued up to any given day. Whatever was the state of the business, the interest was a fixed and ascertainable sum independent of the profits. I think, therefore, that the interest must be apportioned, and that so much as accrued in the testator's lifetime is part of the *corpus* of his estate."

(iii.) *Assurance Premiums.*—By section 6 the operation of the statute is expressly made not to apply to any annual sums made payable in policies of assurance of any description. This was inserted so that no question might be raised as to whether, by the terms of the Act, premiums on insurance policies were apportionable as between the assured and the insurer.

(iv.) *Dividends and Interest accrued at the Death of a Testator or Intestate.*—By the operation of the Act all such dividends when received are apportionable, *i.e.* the proportion accrued at the date of death is to be treated as capital, just as if it had been received by the deceased in his lifetime, and the balance only is to be treated as income. But in this connec-

tion it must be borne in mind that a testator or settlor may, by express direction, prevent the statute operating.

(v.) *Rents on Realty specifically devised.*—Before the Apportionment Acts a specific devise of realty carried with it the accruing rents, but since the Acts these are apportionable, and the portion accrued at the death of the testator falls into his general personal estate (*Hasluck* v. *Pedley*, L. R. 16 Equity Cases, 271).

(vi.) *Interest and Dividends on Personalty specifically bequeathed.*—Before the Apportionment Acts a specific bequest carried with it all accrued dividends, but since the Act this is no longer the case, and such dividends, etc., are, like rents on realty, apportionable as between the estate of the testator and the specific legatee.

It is a curious thing that many of the text-books say that this is not so, but that a specific bequest carries with it all accrued dividends. This statement when made is generally supported by the authority of *Whitehead* v. *Whitehead* (L. R. 16 Equity Cases, 528), but this case has never been followed, and in fact may be regarded as expressly over-ruled by the case of *Pollock* v. *Pollock* (L. R. 18 Equity Cases, 329).

The law on this point is clearly stated in a more recent case, that of *in re Beavan* (1885, 53 *L. Times*, 246), where Kay, J., said:—

"Since the Apportionment Act 1870, even where a fund is given absolutely by a testator, the interest down to the moment of his death belongs to him and is apportionable. I do not think, therefore, that the interest [on consols] passes under the specific gift, but that it must be apportioned as at the death of the testator. What he did not receive belongs to his general estate."

(vii.) *Dividends accrued on Stocks sold or purchased by Trustees.*—This point is fully dealt with in the section on Equitable Apportionments.

The Apportionment Act has no application to such cases, as the Act only applies on the determination of an estate (see *infra*, p. 101). This was decided in the case of *in re Clarke* (1881, L. R. 18 Ch. Div. 160). In that case a testator after the Apportionment Act of 1870 bequeathed a sum to trustees, such sum to carry interest at 4½ per cent until the same should be paid or appropriated, upon trust, with the consent of the widow, to pay the annual income of the legacy and the investments thereof, including in such income the interest payable in respect of such legacy, to his widow for life, with remainders over.

Interest was paid to the widow up to the day when, pursuant to an order of the Court, the bequeathed sum was invested in stocks, on some of which five months' dividends had then accrued.

It was held that the Apportionment Act did not apply, and that the widow was entitled to the whole of the dividends when received upon the purchased stock.

Bacon, V.C., in his judgment said:—"The Apportionment Act is now reasonably familiar to us, and the principle is perfectly well established, that where a person has a limited interest in a fund, and his estate determines between two periods of payment, the new owner is not entitled to the whole of the income since the last period of payment.

"A case exactly like this (the present case) has never, I believe, come before the Court until now.

"Every one of those cases which have been referred to was a case which came within the spirit and policy if not within the very words of the Act.

"Whatever is done with the fund (*i.e.* the fund in question), the legatee

is during her life to have the whole benefit of it. What has that to do with the Apportionment Act?

"No one else has any claim upon it, for nothing can be done without her consent. The case, in my opinion, is not governed by the Apportionment Acts, or by the cases decided upon them.

"By the terms of the will 4½ per cent is payable until appropriation, and then she is to have the income arising from the investment.

"By the very words of the will she is entitled to every shilling of the interest."

(viii.) *Dividends generally and Interim Dividends.*—In apportioning a dividend it is clear that under the Act of 1870 regard has to be had, not to the date of payment, but to the period for or in respect of which the payment is made. The words used in section 5 are clear and unambiguous: "And all such divisible revenue shall, for the purposes of this Act, be deemed to have accrued by equal daily increments during and *within the period for or in respect of which the payment of the same revenue shall be declared or expressed to be made.*"

The Act of 4 and 5 Will. IV. c. 22, secs. 2, 3, used the words "according to the time which shall have elapsed from the commencement or last period of payment thereof respectively (as the case may be), including the day of the death of such person." The consequence, under the old Act, was that for the purpose of apportionment a dividend had to be taken as payable on the day on which it was actually paid, and no regard taken of the period in respect of which the dividend was declared.

Thus in the case of *Hartley* v. *Allen* (1858, 27 L. J. Chancery, 621):—A company declared dividends half-yearly on the 31st March and 30th September in each year. For the half-year ending 30th September 1856 the dividend was received on 26th December 1856 by a tenant for life, who died on 31st March 1857. The question for decision was whether on making the apportionment, on his death, as between his estate and the remainderman, his estate was entitled to the proportion represented by the days from 30th September 1856 to the day of his death, or from 26th December 1856 to the day of his death.

The Court held that the Act only gave him a proportion from the actual date of payment.

The decision was followed *in re Maxwell's Trusts* (32 L. J. Ch. 333).

It must be pointed out, however, that these decisions are in effect overruled by the Apportionment Act of 1870, which clearly makes the apportionment referable to the period for which the payment is made or declared, and not referable to the date of payment as formerly.

There has been no decision with regard to the apportionment of interim dividends, but it is submitted that these are payments on account "in respect of a year's dividend," and that therefore the apportionment must usually be made in respect of the full year's dividend when ascertained.

In deciding such a point, however, regard would have to be paid to the circumstances under which the interim dividend was declared, the form in which it was expressed, and the articles of association of the company paying the dividend, as it is conceivable that there are cases to which the rule submitted might not be held to apply.

(ix.) *Tithes.*—These are clearly apportionable under the Apportionment Act.

The Tithes Commutation Act, 1836 (6 and 7 Will. IV. c. 71), substituted rent-charges in lieu of tithes, and by section 71 of the said Act it was provided that "any person having any interest in or claim to any tithes, or to

any charge or incumbrance upon any tithes, before the passing of this Act, shall have the same right to or claim upon the rent-charge for which the same shall be commuted as he had to or upon the tithes, and shall be entitled to have the like remedies for recovering the same as if his right or claim to or upon the rent-charge had accrued after the commutation"; and by section 86 of the same Act it was provided that "the several provisions of an Act passed in the fourth and fifth years of his present Majesty, intituled 'An Act to amend an Act of the eleventh year of King George the Second, respecting the apportionment of rents, annuities, and other periodical payments,' shall extend to all rent-charges payable under this Act."

Moreover, in the interpretation clause of the Apportionment Act of 1870 the word "rents" is defined as including, *inter alia*, "tithes and all periodical payments or rendering in lieu of or in the nature of rent or tithe."

2. ACT DOES NOT APPLY WHERE STIPULATION IS MADE TO THE CONTRARY.—Section 7 provides that the Act shall not extend to any case in which it is expressly stipulated that no apportionments shall take place. This does not mean that in every case express words must be used to the effect that no apportionment is to take place; if the terms of the gift are so clear as necessarily to exclude apportionment, that is sufficient. Or as it is stated in *Tyrell* v. *Clarke*, 1854 (2 Drewry's *Reports*, 86), in order to exclude apportionment the Act requires an express direction that there shall be none, or language so express in the terms of the gift that apportionment is clearly impossible consistently with it. Inference from the whole tenor and context of the will is not sufficient to exclude the operation of the statute.

This decision was based on the construction of sec. 3 of 4 and 5 Will. IV. c. 24, but applies equally to sec. 7 of the Apportionment Act of 1870, as both sections are practically identical in terms.

In the above case the testator had used the following words: "And I give and bequeath, after the decease of my said wife, unto W. D. £1000 reduced bank annuities, *and all subsequent dividends payable thereon*, for his own use and benefit."

The question was, whether on the death of the wife (who had a life-interest in the stock) there must be an apportionment of the next dividend as between her estate and the remainderman W. D.? The remainderman relied on the words *subsequent dividends*, which he contended amounted to an express declaration that the Apportionment Act was not to apply.

The Vice-Chancellor in his judgment said:—"The Legislature has required an *express stipulation*. It appears to me that the language requires something very different from inference to be collected from the general terms of the will.

"No doubt there may be cases where, though the testator has not inserted in so many words a stipulation that apportionment shall not take place, yet he has used terms of gift so clear, so express, as necessarily to exclude apportionment. That would amount to an express stipulation.

"But that is very different from saying that where a testator has, instead of an express stipulation, used language such as is found in this will, the Court is to infer that he intended to exclude the operation of the statute. I am of opinion that this is a case for apportionment."

The case of *Stapleton* v. *Stapleton* (1852, 21 L. J. Ch. 434) is an example of a case where the terms of the bequest were held to be sufficient to prevent the operation of the Apportionment Act without express words.

The words of the gifts were: "I bequeath all the rents and arrears of

rent and other annual profits, due to me at the time of my decease from my B. estate, unto the person or persons who shall be entitled to the freehold or inheritance of the same estate in possession on my decease."

V.-C. Kindersley, in giving judgment, said:—"It is clear, under the Apportionment Act, that where rent is to be apportioned, there the legal personal representatives of the testator are entitled to so much of the rent as accrued due from the last half-year; but the question is whether it did not pass under this particular bequest.

"In one sense, undoubtedly, this portion of the testator's estate was not *due* at the time of the testator's decease, but the Act says that the executor shall be entitled to it as part of the testator's assets.

"I do not think, in this case, that it would be reasonable to adhere strictly to the words 'due to me'; but I think it may fairly be considered to have been due to the testator when it constitutes part of his assets, and is applicable to his debts, etc.

"I think, therefore, that the apportioned part of the rent received did pass under the bequest to the plaintiff." In other words, there was to be, in effect, no apportionment.

3. THE CIRCUMSTANCES TO WHICH THE ACT APPLIES.—Although sec. 2 of the Act provides that "all rents, etc., shall be considered as accruing from day to day, and shall be apportionable in respect of time accordingly," it must not be assumed that all payments, even though of the kind covered by the Act, are apportionable under all circumstances; it will be found that the circumstances under which the Act applies are indeed very limited.

To ascertain when apportionment is to take place, it is necessary to go back to the previous Apportionment Act—the Act of 4 and 5 Will. IV. c. 22, by sec. 2 of which it was enacted that "All rents, etc., shall be apportioned on the death of any person interested in any such rents, etc., or on the determination by any other means whatsoever of the interest of any such person." It was held in the case of *Clive* v. *Clive* (L. R. 7 Ch. App. Cases, 433) that the Apportionment Act of 1870 did not alter the Act of 4 and 5 Will. IV. c. 22, but only extended the principle of that Act so as to make it applicable to every form of reservation of income.

Under the Act of Will. IV. apportionment takes place—

(1) On the death of the person interested in the income;

(2) On the determination by any other means whatsoever of the interest of the person interested in the income.

With reference to the second point, *i.e.* determination of interest by means other than death, notice must be taken of the decisions of the Courts which have extended the meaning usually attached to "determination."

Thus in the case of *Shipperdson* v. *Tower* (1844, 8 *Jurist*, 485), where during the minority of a tenant for life trustees were to stand possessed of the estate (real and personal), and out of the income to apply any annual sum as they should think proper towards the maintenance of such minor, and to invest the surplus and hold it under the same trusts as they held the capital of the trust funds, the Court held that the coming of age of the minor was a determination of interest within the meaning of sec. 2 of 4 and 5 Will. IV. c. 22, and that apportionment must take place, and that the surplus of all dividends, etc., accrued to the date of the coming of age of the minor was capital, and the balance only income receivable by the tenant for life.

Again, in the case of *Clive* v. *Clive* (1872, L. R. 7 Ch. Appeals, 433), a testator gave his residuary personal estate to his trustees in trust for his two granddaughters as tenants in common, their shares to be vested at

twenty-one or marriage, the income to be applied for their benefit during minority, and the surplus accumulated. And the testator directed that in case either granddaughter married under twenty-one, the trustees should settle her share for her life for her separate use, with remainder to her children.

Both the granddaughters married under twenty-one, and their absolute estates were thus reduced to life estates.

It was held by the Court that this was a sufficient determination of interest to bring the case within the Act, and that therefore the income was in each case apportionable up to the date of the daughter's marriage.

It is important to remember this limited application of the Apportionment Act, *i.e.* to cesser of interest by death or otherwise; bearing this in mind, it is evident that (as previously explained) the Act can have no application, so as to effect apportionment, to cases of change of investments by sale or purchase.

It must be noticed that the Act is retrospective, and applies to instruments made before the date of the Act. Thus in the case of a testator who died before the Act came into operation, and gave the income of his residuary estate to his wife for life, with remainder to his nephews, it was held that although the widow got the benefit under the old law of all the dividends accrued at the death of her husband, yet on her death in 1883 her executors were entitled to take advantage of the new law, and were entitled to an apportioned part of the dividend which accrued up to the time of her death.

4. By whom the Apportioned Part is recoverable, and when.—Section 4, while giving the parties entitled to the apportioned part the same remedies as they would have had if entitled to the whole, expressly provides that in the case of rents the persons liable therefor shall not be resorted to for any such apportioned part specifically, but that the entire rent shall be recovered by the person who would, but for the Act, have been entitled to the entire rent, and that the parties entitled to the apportioned part must recover it from the heir or person entitled.

Since the Land Transfer Act of 1897, vesting all realty in the legal personal representative, this provision is not very important.

As regards dividends, interest on money, etc., these are receivable by the legal personal representative, who must make the proper apportionments and account to the parties interested.

Section 3 sets out very clearly *when* the apportioned part is payable to the party entitled thereto, *i.e.* in the case of a continuing payment, when the next payment, of which the apportioned share forms part, becomes due and payable, and in the case of a rent, annuity, or other payment determined by re-entry, death, or otherwise, when the next entire portion would have been payable if it had not been so determined.

5. The Income apportionable is Net, not Gross Income.—This is provided for by section 4 of the Apportionment Act, which gives the parties entitled thereto the power to recover the apportioned part "when payable," "allowing proportionate parts of all just allowances."

"All just allowances" is a comprehensive term, and covers everything that is *properly* allowed by the party collecting the rent or other payment as a deduction, *e.g.* income tax, landlord's repairs, etc.

II. Apportionment under various Statutes.—The statutes already dealt with refer to the apportionment of periodical payments with respect to time: the other numerous statutes dealing with the subject deal with apportionment in respect of estate; usually they deal with the question as

to how such apportionment is to be arrived at, *i.e.* they appoint the mode or machinery for so doing. Thus sec. 116 of the Lands Clauses Consolidation Act of 1845, 8 and 9 Vict. c. 18, enacts:—"If part only of lands charged with any rent-service, rent-charge, chief or other rent, payment, or incumbrance, be required to be taken for the purpose of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owners of the land on the one part, and the promoters of the undertaking on the other part; and if such apportionment be not so settled by agreement, the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with the consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof."

The above section is set out to show more exactly than any explanation can the nature of the apportionments dealt with by this and similar statutes.

For reasons already given, it is not proposed to further deal with apportionment in respect of estate in this article, and therefore no detailed account of the statutes dealing with the subject is attempted; it has, however, been thought advisable to append a list of the various statutes and their short effect for reference:—

List of Statutes Dealing with Apportionment

I. In Respect of Estate

1. *Landlord and Tenant*

Apportionment of rent on surrender of leases in certain cases	45 and 46 Vict. c. 38, sec. 13.
Apportionment of conditions of re-entry when reversion severed and rent apportioned	22 and 23 Vict. c. 35, sec. 3.
Apportionment of conditions of re-entry and other conditions, notwithstanding severance of reversion, etc.	44 and 45 Vict. c. 41, sec. 12.

2. *Apportionment of Tithe Rent-charge*

Appointment of valuers and umpires	6 and 7 Will. IV. c. 71, secs. 32, 33, 53.
Apportionment by valuers or commissioners	6 and 7 Will. IV. c. 71, secs. 33-35, 54, 55, 57-60.
Deposit for inspection and hearing of objections	6 and 7 Will. IV. c. 71, sec. 61.
Deposit for inspection, where one landowner only in parish, not necessary	7 Will. IV. and 1 Vict. c. 69, sec. 6.
Confirmation by Commissioners	6 and 7 Will. IV. c. 71, secs. 63, 66; 7 Will. IV. and 1 Vict. c. 69, sec. 1; 2 and 3 Vict. c. 62, sec. 22; 10 and 11 Vict. c. 104, sec. 2.

Deposit and custody of copies of instruments of apportionment	6 and 7 Will. IV. c. 71, sec. 64; 9 and 10 Vict. c. 73, sec. 17; 23 and 24 Vict. c. 93, sec. 28.
Restoration of instrument of apportionment where damaged	23 and 24 Vict. c. 93, sec. 27.
Value of tithes, how to be calculated	6 and 7 Will. IV. c. 71, secs. 37-44; 7 Will. IV. and 1 Vict. c. 69, sec. 7.
Valuation of, and apportionment of rent-charge on, market, hop, or fruit gardens	6 and 7 Will. IV. c. 71, secs. 40-42; 2 and 3 Vict. c. 62, secs. 26-33; 3 and 4 Vict. c. 15, secs. 18, 19; 23 and 24 Vict. c. 93, secs. 42, 43; 36 and 37 Vict. c. 42.
Exemption of gardens and lawns in certain cases	3 and 4 Vict. c. 15, sec. 25.
Common or Lammas lands, rent-charge, etc., in respect of right on	2 and 3 Vict. c. 62, secs. 13, 14; 3 and 4 Vict. c. 15, secs. 15, 16; 23 and 24 Vict. c. 93, secs. 18-23.
Valuation of coppice wood . .	6 and 7 Will. IV. c. 71, sec. 41.
No deduction allowed for rates . .	6 and 7 Will. IV. c. 71, sec. 37.
Moduses or prescriptions, how allowed for	6 and 7 Will. IV. c. 71, sec. 44.
Apportionment to distinguish closes .	3 and 4 Vict. c. 15, sec. 21.
Apportionment need not state several amount of corn charged on each estate	7 Will. IV. and 1 Vict. c. 69, sec. 4.
Apportionment, where made after parochial agreement, need not state particulars of cultivation	7 Will. IV. and 1 Vict. c. 69, sec. 5.
Apportionment upon several lands of same owner	6 and 7 Will. IV. c. 71, sec. 58.
Apportionment where tithes held by one owner in several rights, or by joint-owners	2 and 3 Vict. c. 62, sec. 24.
Apportionment on particular lands of rent-charges payable to particular owners	7 Will. IV. and 1 Vict. c. 69, sec. 9.
Apportionment of charges and incumbrances upon part only of tithe or rent-charge	2 and 3 Vict. c. 62, secs. 4 and 5.
On removal of fences, land tithe free may be apportioned jointly with other land	23 and 24 Vict. c. 93, sec. 12.
Alteration of apportionment by land tax or tithe commissioners	6 and 7 Will. IV. c. 71, sec. 72; 5 and 6 Vict. c. 54, secs. 14, 15; 10 and 11 Vict. c. 104, secs. 3 and 4; 23 and 24 Vict. c. 93, secs. 10-17.
Alteration of apportionment where lands charged have been enclosed, divided, allotted, or exchanged	9 and 10 Vict. c. 73, secs. 13, 14.
Alteration of apportionment where boundaries of parish have been altered	23 and 24 Vict. c. 93 sec. 16.

New apportionment, where first apportionment included small tenements for which no tithes have been taken for seven years	3 and 4 Vict. c. 15. secs. 26, 27.
Supplemental apportionment in certain cases	9 and 10 Vict. c. 73, sec. 15.
Cases reserved for separate adjudication	6 and 7 Will. IV. c. 71, sec. 39; 5 and 6 Vict. c. 54, sec. 4.
Valuation of lands hitherto wholly or partially exempt for certain reasons, and substitution of fixed for contingent rent-charge on, etc.	6 and 7 Will. IV. c. 71, sec. 43; 2 and 3 Vict. c. 62, secs. 11, 12; 3 and 4 Vict. c. 15, sec. 14.

3. *Copyholds*

Apportionment of commutation rents and fines	4 and 5 Vict. c. 35, secs. 50, 52, 55.
Apportionment of rents charged for enfranchisement	6 and 7 Vict. c. 23, secs. 4-8.

4. *Miscellaneous*

Apportionment of rent-charges on Crown lands	15 and 16 Vict. c. 62, secs. 3 and 4.
Apportionment and redemption of rent-charge under Public Money Drainage Acts	9 and 10 Vict. c. 101, secs. 44, 45; 19 and 20 Vict. c. 9, secs. 8, 10.
Apportionment and release of rent-charges under Improvement of Land Act, 1864	27 and 28 Vict. c. 114, secs. 68-71.
Apportionment of rent and compensation to lessee on acquisition of lands under Lands Clauses Consolidation Acts, etc.	8 and 9 Vict. c. 18, secs. 115-120.

II. In Respect of Successive Interests

Apportionment of rents, annuities, and other fixed payments, between estate of deceased beneficiary and his successors	11 Geo. II. c. 19, sec. 15; 4 and 5 Will. IV. c. 22.
Apportionment of rents, dividends, and other periodical payments (the Apportionment Act, 1870)	33 and 34 Vict. c. 35.
Apportionment of sewer rates between successive tenants	3 and 4 Will. IV. c. 22, sec. 18.

Equitable Apportionment

In addition to apportionment at common law and apportionment by statute, which have already been dealt with, it is necessary to consider what is known as equitable apportionment—that is, apportionment made in accordance with the decisions of the Courts of Equity.

Equitable apportionment has a much wider range than either apportionment by statute or at common law, and may be said to include all possible kinds of apportionment; *inter alia*, apportionment of costs, damages in a suit, expenses of paving roads, expenses incurred by a local board, etc., etc. As will be seen, a great many of these apportionments are, from their nature, altogether outside the scope of this work, and no attempt has been made to deal with them in this article, the object being to restrict the article to the consideration of those apportionments, a knowledge of which is likely to be of practical value to an accountant or trustee. Many of the cases in the books are omitted on another ground, namely, that they do not illustrate general principles, but are rather decisions on points arising on the construction of wills, or the interpretation of the intention of the parties in the particular case.

It will be observed that the cases considered are chiefly cases which deal with apportionment as between tenants for life and remaindermen. The grounds on which the Courts of Equity base their jurisdiction in such cases are well stated by the then Master of the Rolls in the case of *Lord Londesborough* v. *Somerville* (19 Beavan, 297):—

"Cases have occurred frequently, showing the principle and view which equity takes of cases of this description. They rest upon the broad and general principle of doing justice between the tenant for life and the persons entitled to an estate in remainder, but which, as was observed by Lord Eldon in *Burges* v. *Lamb* (16 Vesey, 177), in some cases involves matters of 'much importance and difficulty.'"

In considering decisions of the Courts of Equity, care is necessary to distinguish those cases which lay down what may be said to be a general rule of equity from those which, whilst not disturbing the authority of the general rule, do not in the particular instance follow it.

Courts of Equity, whilst recognising their own decisions as creating rules which they are bound generally to follow, yet allow to themselves a certain latitude in departing from these rules where for the sake of justice it is necessary that they should so depart, provided it is possible to show that the particular case differs in some respects from those coming within the general rule, and for this purpose these Courts very often consider a very slight difference sufficient to take a case out of the general rule.

If this distinction, *i.e.* between cases which illustrate a general rule and cases which (owing to special circumstances) depart from the general rule, is carefully borne in mind, the apparent contradiction of some of the cases is explained.

Apportionment as between Tenants for Life and Remaindermen.—As already pointed out in the section dealing with apportionment of periodical payments, all income, generally speaking, arising from personalty or realty, whether bequeathed or devised, specifically or not, must be apportioned as between the estate of the testator and the legatee or devisee, so as to ascribe to the testator's estate, on the presumption that income accrues *de die in diem*, the portion of the income that accrued in the testator's lifetime; but where personalty (which of course includes leaseholds) is bequeathed to one for life with remainders over, another question arises, namely, Is the tenant for life (such apportionment as aforesaid having been made) entitled to all the *future* income during his lifetime? The answer is not so obvious as it might at first sight appear to be; it depends on whether it is absolutely clear, from the terms of the bequest, that the testator intended the legatee to enjoy the estate *in specie*.

Where there is a devise of realty to one for life with remainders over,

the tenant for life is entitled to the actual produce of the estate; the presumption being that the testator intended his devise to descend unaltered in form; in the case, however, of a similar bequest of personalty, the presumption is the other way, that is, unless there are clear, expressed or implied, directions against conversion, it is implied that the testator intended his bequest to be converted into such a form as to insure, as near as may be, similar benefits to the tenant for life and remainderman.

It is obvious that, but for this rule, where the personalty consisted of wasting assets, *e.g.* short leaseholds, the effect might be that the persons entitled in remainder might ultimately get nothing from the bounty of their testator.

As many of the equitable apportionments between tenants for life and remaindermen arise from the application of the rule as to conversion, it is desirable to state shortly the law relating to conversion in this connection, as otherwise it might be difficult to follow the rules as to apportionment arising thereout.

The fact that trustees have a discretion as to the time *when* they will convert does not alter the application of the rule as to conversion; the rule of Court being that, where a discretion is given to trustees to postpone conversion, while the Court will not interfere with the exercise of such discretion, yet they will see that in the ultimate result neither the tenant for life nor the remainderman are injured thereby (1885, *Wilkinson* v. *Duncan*, 23 Beavan, 469).

The Rule as to Conversion of Personalty.—This rule is generally known as "the rule in *Howe* v. *Lord Dartmouth*," from the case of that name (1802, 7 Vesey, 137), in which the rule was first clearly laid down. The rule as there laid down is that "where personal property is bequeathed for life with remainders over, and not specifically, it is to be converted into the 3 per cents, subject in the case of a real security to an inquiry whether it will be for the benefit of all parties; and the tenant for life is only entitled upon that principle."

The modern effect of this rule is that "when there is a residuary bequest of property to persons in succession, and no trust for conversion, and such property is not invested upon securities which would be authorised by the Court, then, unless there is an express or implied expression of intention by the testator that such property is to be enjoyed *in specie*, the general rule of the Court is, that it is to be converted and invested in $2\frac{3}{4}$ per cent consols.

"The rule is founded on presumed intention, that is, where personal estate is given in terms amounting to a general residuary bequest, to be enjoyed by persons in succession; and in order to effectuate that intention, the Court, as a general rule, converts into permanent investments so much of the personalty as is not invested, and also reversionary interests.

"It follows from what is laid down in the principal case that all property, of whatever kind, included in a residuary bequest, whether wasting, perishable, or even permanent in its character, if it be not invested in authorised securities or real securities, would, in the absence of any directions to invest, be converted and invested by order of the Court in $2\frac{3}{4}$ per cent consols; and it will be a breach of trust on the part of the trustees not to act in the same manner" (White and Tudor's L. Cases).

"It is quite clear that the rule must be applied unless upon the fair construction of the will you find a sufficient indication of intention that it is not to be applied, the burden in every case being upon the person who

says the rule ought not to be applied," per James, L. J., in *Macdonald* v. *Irvine* (1878, 8 Ch. Div. 124).

The rule (as stated) is of universal application, and is not solely applicable to wasting securities, but applies to investments, where, from their nature, no loss would be caused to the remainderman by delaying realisation.

Thus in *Dimes* v. *Scott* (1827, 4 Russell, 200), Lord Gifford, the then Master of the Rolls, said:—"One principle of the Court is that, where a testator gives a residue to a person for life, with remainders over, property comprised in that residue, being of a perishable nature, so that the *corpus* is becoming of less value from year to year, must be converted. Another principle is, that if the residue comprises property of a reversionary nature that too must be converted. The one rule protects the remainderman; the other protects the tenant for life.

"But this is the first case where the *corpus*, remaining imperishable, has produced, for a limited time, a larger interest than it would have yielded had it been laid out in England. Here the principal was secure; but it was lent out in a foreign country at a higher rate of interest than could have been obtained at home. The question is, Should the excess of interest thus obtained be applied to increase the *corpus* of the fund? It was the duty of the executors to have sold this debt due from the East India Company, and to have invested the money in the 3 per cents; then the tenant for life would have received only the dividends which the stock so purchased would have produced; and I must, therefore, disallow (though reluctantly) these payments to her so far as they exceeded the dividends on that amount of 3 per cent stock."

Duties and Liabilities of Trustees as to Conversion.—As already stated, the rule as to conversion applies, unless in the will there is a sufficient indication of intention that the bequest is to be enjoyed *in specie*, and in every case the burden of proof is upon the persons who say the rule ought not to apply.

"Where there is a duty to convert, the rule *prima facie* is that the conversion should take place within the year from the testator's death" (*Grayburn* v. *Clarkson*, 3 Ch. 605).

Executors or trustees neglecting to convert wasting or improper securities bequeathed in succession, and permitting the legatee for life to receive more than he would have done if conversion had been duly effected, are guilty of a breach of trust, and will be entitled in passing their accounts to an allowance only of the dividend which the legatee for life would have been entitled to if the securities had been converted within a year from the testator's death.

If the security, when realised, produces more than it would have produced if sold at the end of the year, they will not be entitled to set off this gain (*Dimes* v. *Scott*, 4 Russ. 195; and see White and Tudor's L. Cases).

But by an inquiry in the same suit, trustees who had improperly allowed perishable property to remain *in specie*, and to be enjoyed by the tenant for life, were allowed to recover back against the estate of the tenant for life the amount overpaid to him (1854, 19 Beavan, 90).

Variation of the Rule as to Conversion according to the Nature of the Investments.—For the purpose of this rule investments are divided into three classes; and the applicability, or not, of the rule, and the mode of its application, depends on whether the investments belong to the first, second, or third of these classes.

These distinctions and the resulting effects are clearly set out in the

judgment in *Meyer* v. *Simonson* (1852, 5 De Gex and Smale, 726). "The principal question raised in this case, which is one familiar to the Court, is correctly laid down in *Howe* v. *Lord Dartmouth*. The only difficulty that has occurred is as to the mode of applying that principle to the several cases as they arise. There are three distinct classes of cases to which the principle applies: First, where the subject-matter of the bequest is either invested in the funds or in some security of which the Court approves; there conversion is not necessary, and the tenant for life takes the interest of the fund as it is, and the *corpus* belongs to those entitled in remainder. The second class is, where part of the estate can be sold and converted so as not to sacrifice the interest of the tenant for life or of the remainderman; such a case is one of partial conversion, and the proceeds of the part converted must be laid out on the permanent securities approved of by the Court, of which the tenant for life will take the interest, and the remainderman the *corpus*. The third class is where property is so laid out as to be secure, and to produce a large annual income, but is not capable of immediate conversion without loss and damage to the estate, as in *Gibson* v. *Bott* (7 Vesey, 89) and *Caldecott* v. *Caldecott* (1 Y. and C. C. C. 312); there the rule is not to convert the property, but to set a value upon it, and to give to the tenant for life 4 per cent (per annum) on such value, and the residue of the income must then be invested, and the income of the investment paid to the tenant for life, but the *corpus* must be secured to the remainderman."

It is important to keep in mind the distinction made between these classes of investments.

The first class is where the subject-matter is invested in authorised securities, and in that case the tenant for life takes the full income produced, and no question of apportionment is raised.

The second class raises the ordinary case of conversion, *i.e.* the investments are not trustees' investments, but are of a kind immediately saleable, and to these the rule in *Howe* v. *Lord Dartmouth* applies, and there is a consequent apportionment as explained below.

The third class is where the subject-matter is of a kind producing a large income, but is not immediately saleable to advantage. In this case the rule in *Howe* v. *Lord Dartmouth* is modified in its application, but only so as to increase the rate of interest allowed to the tenant for life; in this case also there is a consequent apportionment.

The effect of the rule in these cases is stated more fully in the notes to the rules of apportionment given below.

I. Rules of Apportionment as between Tenants for Life and Remaindermen arising out of the Application of the Rule in *Howe* v. *Lord Dartmouth*.

(i.) *Where the Investments are of an authorised Nature.*—In such a case there is no necessity for conversion, and consequently no apportionment of the income, the whole of which goes to the tenant for life.

The rule is stated in the dictum (quoted above) from the judgment in *Meyer* v. *Simonson*, and was directly decided in the case of *Brown* v. *Gellatly* (1867, L. R. 2 Ch. App. 751), where it was laid down "that the tenants for life were entitled to the actual income of so much of the estate as was invested in such shares and securities as were mentioned by the will as proper investments."

It will be seen, from this decision, that authorised securities may be

either securities in which trustees generally are authorised by law to invest, or securities specially authorised by the will.

(ii.) *Where the Investments, not being of an authorised Nature, are of a Kind immediately convertible.*—In this case the investments must be converted, and the income arising therefrom, pending conversion, apportioned in accordance with the following rule:—

The income actually received during the period between the testator's death and the conversion is apportionable as between the tenant for life and remainderman, the tenant for life being entitled to an income equal to the dividends on the amount of consols which would have been produced by a sale and investment in consols at a year from the death; the balance of the actual income is *corpus*, and must be invested for the ultimate benefit of the remainderman, but the tenant for life is entitled to the income arising from such investment (*Brown* v. *Gellatly*, L. R. 2 Ch. App. 751).

(iii.) *Where the Investments, not being of an authorised Nature, are producing a large immediate Income, and the Trustees, in Exercise of a Discretion given to them, delay Conversion, the Investments not being immediately convertible with Benefit to the Estate.*—In this case the tenant for life is not entitled to the whole of the income received pending conversion. Such income is apportionable as follows: a *value* must be set on the investment as on the date of the testator's death, and the tenant for life is entitled to have paid to him out of the income as and when received a proportion representing 4 per cent on such value, and the balance of the income must be invested and treated as *corpus*.

The rule on this point is clearly laid down in the case of *Brown* v. *Gellatly* (1867, L. R. 2 Ch. App. 751).

In that case a testator gave his residuary estate to tenants for life with remainders over, and gave his trustees discretionary power to retain any of his investments in their then form; part of the estate consisted of ships which earned considerable sums after his death and pending conversion, which, in exercise of their discretion, the trustees delayed. Held that the tenants for life were not entitled to the earnings of the ships as income, but that they were only entitled to interest at 4 per cent per annum on the value of the ships from the testator's death.

(iv.) *Where the Investments, not being of an authorised Nature, are not presently Saleable or Realisable except at an unreasonable Loss, and are producing no present Income.*—The kind of investments covered by this rule are securities, such as a policy of insurance on another's life, or a reversionary interest which it is not considered advisable to sell. In such a case the rule in *Brown* v. *Gellatly* is somewhat modified.

The rule may be thus expressed: When the reversion, etc., falls in, or is actually realised, ascertain the sum that, accumulating at compound interest at 4 per cent per annum with yearly rests (deducting income-tax) from the death of the testator, would produce the sum actually realised on the date of such realisation—the sum so ascertained is to be treated as *corpus*, and the balance as income; *e.g.*, suppose the sum realised is £117, and this is realised four years after the testator's death, applying the rule that would give £100 to the remainderman as *corpus*, and £17 to the tenant for life as income, £100 being the sum that, accumulated at 4 per cent compound interest, would produce £117 at the end of four years.

The leading case on this point is *in re Earl of Chesterfield's Trusts* (1883, 24 Ch. Div. 643), which follows the rule laid down in *Beavan* v.

Beavan (1853); this latter case was unreported at the time, but is now printed in full as a note to the report of *in re Chesterfield's Trusts.*

In cases coming within the foregoing rule the rate of interest now allowed is 3 per cent (not 4 per cent as formerly), as in the case of *re Goodenough* (1895, L. R. 2 Ch. 537).

Mr. Justice Kekewich decided that "in applying the rule *in re Earl of Chesterfield's Trusts* as to the apportionment as between capital and income of the amount of an unconverted reversionary interest which has fallen in, interest at 3 instead of at 4 per cent ought to be adopted as the basis of calculation."

But in this connection it may be mentioned that at the time the learned judge made the alteration in the rate, consols stood at 107½, and this fact was mentioned by him as one of the reasons that weighed with him.

The view of Mr. Justice Kekewich as to the rate of interest has been adopted by the Court of Appeal in the case of *Rowlls* v. *Bebb* (1900, 2 Ch. 107), in which case it was held that "in adjusting the rights as between tenant for life and remaindermen in respect of a reversionary interest, interest should be calculated at the rate of 3 per cent and not 4 per cent."

It is possible that the Courts might decide that in cases coming within rule (iii.) the interest ought to be calculated at 3 per cent instead of 4 per cent, but this point has not yet been decided; and although certain writers have expressed an opinion that the decisions quoted cover the case in rule (iii.), it is by no means clear that such is the case.

II. Rule of Apportionment where a Mortgage Security on Realisation proves Insufficient to Discharge the Amounts Due for Principal and Interest.

This point came before the Courts in the case of *in re Foster Lloyd* v. *Carr* (1890, 45 Ch. Div. 629).

In that case a testator gave his residuary estate to trustees in trust for his widow for life, with remainder to certain persons absolutely.

After his death the trustees invested £7535, part of his residuary estate, on mortgage of freehold property at £5 per cent. The trustees afterwards entered into possession and paid the rents to the widow, the tenant for life; but such rents were insufficient to keep down the interest, the arrears of which amounted at her death to £3400. Shortly after her death the trustees sold the mortgaged property; but it realised £7005 only, that is, less than the principal of the mortgage debt.

It was held that the £7005 should be apportioned between the executors of the tenant for life and the remaindermen, the residuary legatees, upon the basis of the following calculation:—

Ascertain the amount actually received for principal and interest by adding to the £7005 the amount of income actually received by the tenant for life; estimate how much the tenant for life would have received if the mortgage interest had been regularly paid, deducting income tax.

Divide the sum actually received (*i.e.* £7005 plus the income paid) in the proportion which the original principal £7535 bears to the aggregate amount of the mortgage interest (less income tax) which the tenant for life would have received if it had been regularly paid. From the proportion so ascertained due to the tenant for life deduct the sums actually received by her, and the balance is then the sum payable to the tenant for life out of the monies realised by the sale, and the balance belongs to the remainderman.

An example may make this clearer:—

Mortgage debt	say	£2000
Interest paid (1 year)	„	100
„ in arrear (2 years)	„	200
Amount realised	„	1500
Add to amount realised on sale, which is . . .		£1500
The amount paid as interest		100
		£1600
Amount due to remainderman is (sum realised) . .		£1500
„ „ „ tenant for life for whole term is (3 years' interest)		300
		£1800

So that the remainderman is entitled to $\frac{15}{18}$ths, or $\frac{5}{6}$ths, and the tenant for life to $\frac{3}{18}$ths, or $\frac{1}{6}$th of the total of £1600, which would give them respectively £1333$\frac{1}{3}$ and £266$\frac{2}{3}$; deducting from this latter the amount already received, viz. £100, gives £166$\frac{2}{3}$ as payable to the tenant for life, making with the £1333$\frac{1}{3}$ payable to the remainderman the £1500 realised.

In the above example, for convenience of calculation, income tax is not deducted; it is also to be noted that, in accordance with the decision in the case under review, the remaindermen are entitled to add to the original principal, interest (in this case at 5 per cent) from the death of the tenant for life to the date of sale in order to arrive at their proportion.

III. Apportionment as between Capital and Income on a Deficiency of Assets.—This point came before the Courts in the case of *in re Tinkler's Estate* (1875, L. R. 20 Equity Cases, 456). In that case a testator bequeathed a legacy of £10,000, with interest from his death at 4 per cent per annum, to trustees upon trust to pay the income to certain persons during the life of one of them, and after her death upon trust for other persons absolutely.

The testator's estate was insufficient for payment in full of his legacies (the realisation of his assets occupying several years). It was held:—

That the monies from time to time received by the trustees and applicable to the legacy was divisible ratably between capital and income, so as to attribute to income £4 per cent from the testator's death on the amount attributed to capital.

Following recent decisions the rate of interest in this case would now, possibly, be 3 per cent and not 4 per cent.

IV. The Law as to the Apportionment in Respect of Dividends accrued on Stocks Purchased or Sold by Trustees.—The question, whether on a sale or purchase of stocks *cum dividend*, the purchase money or the next dividend is apportionable, is one that often arises in the course of the execution of a trust: *e.g.* a trustee purchases as an investment a stock *cum dividend;* is he entitled, when the next dividend is received, to apportion it, and say that part of it is, in effect, a return of capital, *i.e.* was included in the price he gave for the stock, and that only the proportion of dividend earned since the date of the purchase (assuming, as the Apportionment Act does, that dividends accrue from day to day) shall be treated as income? Or take the converse case: A trustee sells stock between dividend days; is he entitled to treat part of the purchase price as being paid in respect of the accrued dividend, and therefore as belonging to the tenant for life?

The common-sense view is that such apportionments ought to be made;

and in practice this view is often adopted. It is not necessary here to discuss the logical soundness or unsoundness of the common-sense view; what we are concerned with is the present position of the *law* on the subject. At first glance the cases appear to be contradictory, and to give us very little assistance, and probably this accounts for the diversity of views expressed by different writers on this point.

Carefully studied, however, the cases can be reconciled, as it will be found that they can all be grouped under two divisions: those which expound and follow the general rule, and those which whilst admitting the existence of the rule *owing to special circumstances* do not follow it. As explained in the section dealing with apportionment by statute, the Apportionment Act has no application to the cases under consideration, the Act only applying *upon the determination of an estate* by death or otherwise; we must therefore seek for the law on this subject in the decisions of Courts of Equity.

There are four cases which, on this point, may be considered leading cases, *i.e. Scholefield* v. *Redfern*, 1863 (2 Drewry & Smale, 173), *Freman* v. *Whitbread*, 1865 (L. R. 1 Equity Cases, 266), which both decide that in such a case *no* apportionment is to be made, and *Lord Londesborough* v. *Somerville*, 1854 (19 Beavan, 297), *Bulkeley* v. *Stephens*, 1863 (3 New Reports, 105) which both decide that in such a case apportionment *is* to be made.

As the judgments in these cases appear to contain all the possible arguments for and against apportionment being made in the cases under consideration, and in order to show that all the cases support what the writer says is the rule of law on this point, the judgment on each of them is set out somewhat fully.

It is convenient to take the cases in chronological order, as the earlier ones are referred to in the judgments in the later ones. Following this order the first case is that of *Londesborough* v. *Somerville*, decided in 1854. In that case the then Master of the Rolls in his judgment said: "I cannot doubt that the price paid for the stock was compounded, in part, of the prospect of receiving the dividend, payable in about four weeks; and if the stock had been sold the day after the dividends had been received or previously thereto, and exclusive of the dividend, it would have realised a smaller amount than it did.

"The price of the stock, exclusive of the dividend, appears to me to be the capital, and the amount by which it was augmented by the dividend appears to me to be the income which belonged to the tenant for life who is fairly entitled to receive it. If he does not receive it the effect will be that part of the purchase money for the *corpus* of an estate will be paid out of the income of the tenant for life, by which the remainderman will gain an undue advantage. It is obvious that if that principle were pressed to the extremity the tenant for life might be kept out of his income for a considerable period of time.

"I think that the proper mode of determining how much the tenant for life is entitled to, is to ascertain what the stock would have produced on the date of sale exclusive of the dividend upon it. To the extent of the difference I think the tenant for life is entitled to be recouped."

The next case is that of *Scholefield* v. *Redfern*, decided in 1863. In the course of a long judgment the then Vice-Chancellor said:—

"There is another question of a peculiar kind, and one that is novel to me. The point will be best explained by putting an example.

"Suppose part of the testator's property to consist of certain American stock, bearing interest or dividends payable at half-yearly periods, say

January and July, and the trustees sell it in order to invest the proceeds in consols; if they sell it at any other time than precisely the period at which a dividend has just accrued, the money realised by the sale is so much more in proportion to the time which has elapsed since the last dividend day. Therefore the amount realised by the sale is compounded partly of the value of the stock itself, and partly of the value of that proportionate part of the current half-year's dividend which may be considered to have accrued since the last dividend day.

"It is contended that the tenant for life ought to have this latter portion as income. Now it is certain that in the multitude of cases of administration of estates in modern times where similar directions (*i.e.* for conversion) have been given by testators, the Court has never been in the habit of administering any such equity.

"When we consider a little further, it is obvious that if the tenant for life is to have something out of sale money as representing income, then when the trustees invest the money, unless they invest it on the very day when the dividend has accrued due, the same equity ought to be administered the other way, and we ought to take from the tenant for life something of his next dividend on the consols, and add that to the capital, in order to make things equal as between him and the remainderman.

"It is clear that if there is an equity one way there is an equity the other way. It is obvious that why such equity on either side has never been administered habitually by this Court is, that by attempting it a grievous burthen would be imposed on the estates of testators by reason of the complex investigation it would lead to.

"The gain to either party would be far more than compensated by the expense which might be incurred in a complicated case, and for that reason, no doubt, the thing has never been done.

"I will not be the first to introduce the practice. But a case has been cited of *Londesborough* v. *Somerville* (19 Beavan, 295), in which something of this sort of equity, no doubt, was administered in a special case.

"But when I look at that case I find that it was decided evidently upon very special circumstances.

"That decision would not justify me in introducing a practice which I conceive to be very objectionable, and which has never prevailed.

"But it was suggested, that though this may be so with regard to stock, the dividends on which are payable at the end of each successive half-year, a different rule is applicable to the case of railway debentures and other property of that description, yielding interest *de die in diem.*

"If anything is received as interest, that interest will belong to the tenant for life; but if the debenture is sold for a given sum that sum must be treated as capital.

"I must adhere to the established practice."

The next case in order is that of *Bulkeley* v. *Stephens,* decided in 1863 (the same year as the preceding case).

In that case it was held that, where under orders given in chambers a sum of stock was sold shortly before a dividend was due, the tenant for life of such sum was entitled to receive, out of the proceeds of the sale, a sum equal to the apportioned part of such dividend from the last dividend day up to the day of sale.

In the course of his judgment the learned judge who decided the case said that—"Ordinarily, on a change of securities, the Court did not make an order of the kind here asked for, but this was a strong case in favour of the tenant for life, and although he gave full force to the reasoning of the

Vice-Chancellor Kindersley in *Scholefield* v. *Redfern* (see *ante*), he thought that it did not apply in the present instance. He thought that the case of *Lord Londesborough* v. *Somerville* (see *ante*) was exactly in point, and on the ground on which the Master of the Rolls decided that case, viz. on that of the general justice of the case, he was of opinion that the widow was entitled to the apportionment she claimed.

The last case is that of *Freman* v. *Whitbread*, decided in 1865.

In that case the facts were as under:—The trustees of a settlement agreed to purchase real estate, and for this purpose sold out certain stocks.

Had the stocks been sold on the day originally arranged they would have been sold *ex dividend;* as it was, owing to defects in the title of the real estate, the completion was delayed, and the stocks, when actually sold, were sold *cum dividend.*

The petitioner in the case, the tenant for life, claimed that a portion of the price realised by the sale of the stocks represented income, and must be paid to her.

The judgment in this case is set out below *in extenso*, as it contains such a lucid exposition of the law on the subject, and also a careful examination of the preceding cases.

The Vice-Chancellor, in giving judgment, said—"The petitioner asks by this petition payment out of the capital fund now in Court of a sum of £231:17:2, which is alleged to be loss of income sustained by her by reason of the delay in completion of the purchase, and in the sale of the stock (consols, etc.)

"The petitioner does not contend that in every case, and under all circumstances, the tenant for life is to have the benefit of this sort of equity, if it happens that the stock is sold by the trustees on some day in the interval between a given dividend day and the time when the stock would again, if sold, be sold *ex dividend.*

"Had such been the contention I am of opinion that it could not have been sustained.

"In creating such a trust, the settlor or testator has not prescribed any particular day or time which the trustees shall select for the completion of their contract to purchase the land and for the sale of the stock; he has left that to the discretion of the trustees in the honest execution of their trust; he must have known that when the trust came to be executed, the stock might have been sold either on the dividend day, or within that short period immediately preceding the dividend day during which such stock, if sold, would be sold *ex dividend*, or at any time between one dividend day and the next (in which case the stock would be sold *cum dividend*).

"If he had intended that in the latter case the tenant for life should be paid out of the *corpus* a sum of money as a compensation for the interval between the dividend day next before the sale of the stock and the day on which the stock should be sold, he would have said so.

"If he had not said so, what right has the Court to add such a provision to the trusts created by the settlement or will?

"Whether under certain very special circumstances there may be ground for making an exception to the general rule is another question, but I am of opinion that, as a general rule, the tenant for life has no such right, and so I decided in *Scholefield* v. *Redfern.*

"I proceed to consider the claim of the petitioner founded on the circumstance, that by reason of difficulties in the title, the stock was not sold on the 29th of September, the day fixed for completion of the purchase, when it would have been sold *ex dividend*, but on a subsequent day.

The claim of the petitioner assumes two or three propositions, which it may be convenient to mention at the outset.

"First, it assumes that in the consideration of the present question, which is a question between tenant for life and remainderman, all fluctuations in the price of stock arising from political or commercial causes must be entirely left out of consideration. To this proposition I entirely accede.

"Secondly, it assumes that if the price of stock, on or shortly before a given half-yearly dividend day, when the stock is sold *ex dividend*, be so much per cent, that price would during the half-year between that dividend day and the next (if you leave out of consideration political and commercial fluctuations) be continually increasing, at least until the stock would again (if sold) be sold *ex dividend;* that is, the nearer you approach the next dividend day the higher would be the price of the stock; so that although it is true that the dividends of stock do not accrue *de die in diem*, yet practically, with reference to the price of stock, it is the same thing as if the dividends did accrue *de die in diem.* It appears to me that this proposition, if not mathematically true, is sufficiently near the truth to be adopted.

"Thirdly, the petitioner's claim further assumes that if stock is agreed to be sold on or about a given half-yearly dividend day, and from accidental circumstances it is not sold till two or three or four months later, though still prior to the next dividend day, that delay in the sale of the stock is to the disadvantage of the tenant for life, and to the advantage of the remainderman, inasmuch as the former gets no dividend or income for that period of delay, while the latter gains by the corresponding increase of price at which the capital stock is sold.

"And, further, that the value of this advantage to the one and disadvantage to the other is to be measured by the amount of that proportion of the half-yearly dividend which ought to be attributed to that period of delay.

"This proposition also (though not quite strictly and mathematically accurate) is sufficiently near accuracy to be adopted for the present purpose. And therefore I assume, for the purpose of this case, that in proportion as you increase the interval between the last preceding dividend day and the day of the sale of the stock, provided it is not carried on till the time when the stock would again (if sold) be sold *ex dividend*, you prejudice the tenant for life and benefit the remainderman.

"I suppose it will not be denied that, *vice versa*, if instead of increasing you shorten that interval, you thereby benefit the tenant for life and prejudice the remainderman.

"Founded on these propositions the claim is put upon this footing.

"By way of illustration, suppose the whole of the stock had been Reduced or New Threes, *i.e.* stock of which the dividends are payable in April and October.. If the stock had been sold on the 29th of September 1862 (the day fixed for completion of the contract), it would have been sold *ex dividend*, and the half-year's dividend which fell due on the 10th of October following would have been received by the trustees, and paid over by them to the petitioner as income; but inasmuch as the stock was not sold till the 3rd of August following, the effect was this, that the petitioner received the half-year's dividend which became due on the 5th of April 1863, but she got no dividend for the interval between the 5th of April and the 3rd of August, *i.e.* the interval between the dividend day next preceding the sale of the stock and the day on which the stock was sold, which was an interval of 120 days; and at the same time the remainder-

man got a benefit corresponding with the petitioner's loss, by reason that so much less stock was sold to raise the money required than it would have been necessary to sell if sold on or just before the next preceding dividend day, when it would have been sold *ex dividend.*

"And this detriment to the tenant for life and benefit to the remainderman arose from the circumstance that, from causes over which neither of them had any control, the stock had to be sold at a different time from that at which it ought to have been sold according to the contract.

"Now, I entirely recognise the abstract principle upon which the claim is founded, and I admit that in the case which I have supposed there exists what may, perhaps, be fairly called a sort of equity. But it must be borne in mind that the basis of the equity is that the stock was not sold when it ought to have been sold according to the contract. And it is no answer to the case of the petitioner to say that by the terms of the contract she was to have the rents and profits of the purchased estate from the 29th September 1862, and that such rents and profits are a compensation to her for the loss of income during the period in question; for it was also part of the terms of the contract that interest on the purchase-money should be paid to the vendors from the 29th September 1862; and such interest would, of course, be payable out of the income of the tenant for life, so that rents and profits would only be a compensation to her for the interest on the purchase-money, payable out of her income, and could not be also a compensation for the loss of dividends during the period in question.

"But now, let us suppose that the whole of the stock (instead of being Reduced or New Threes) had been consols, *i.e.* stock of which the dividends are due on the 5th of January and the 5th of July, what would then be the effect? According to the contract the stock would have had to be sold on the 29th of September (the day fixed for completion of the contract), and if it had been then sold, an interval of 86 days would have elapsed between the last dividend day (5th of July) and the day of sale of the stock, and the petitioner would not have had the benefit of that portion of dividend which was attributable to that interval, but, of course, she would have had no ground for complaining of that, because it would have been in accordance with the contract.

"But by reason of the delay in the completion of the contract the stock was not sold till the 3rd of August. Now, the interval between the last preceding dividend day (5th of July) and the 3rd of August, instead of being 86 days, was only 29 days, that is, 57 days less than it would have been if the stock had been sold on the day fixed for completion of the contract. So that, on the supposition that the stock had all been consols, the effect of the delay in the completion of the contract was, not to lengthen, but to shorten by 57 days the interval between the last day and the day of the sale of the stock, and therefore, according to the petitioner's own principle, the effect was to benefit the tenant for life, and to prejudice the remainderman, by the amount of that proportion of dividend attributable to the 57 days.

"And assuming that, upon the former supposition of the stock being all Reduced or New Threes, the tenant for life would have a good equity which she might enforce against the remainderman, it necessarily follows (if the principle is good for anything) that, upon the latter supposition of the stock being all consols, the remainderman would have a good equity which he might enforce against the tenant for life.

"Having considered what the effect would be on each of the two suppositions that the stock was all Reduced, or New Threes, or that it was

all consols, let me now consider what, upon the same principle, the effect ought to be in the actual case now before the Court, where about half the stock was Reduced or New Threes, and about half consols, or Two and a-half per cents, the dividends of both the last denominations of stock being due in January and July. The effect of the delay in the completion of the contract, and of the stock not having been sold till the 3rd of August 1863, is that, as to the Reduced and New Threes, the tenant for life was prejudiced and the remainderman benefited to the extent of such a portion of the dividend on the Reduced and New Threes sold as ought to be attributable to the period of 120 days, that is, from the 5th of April to the 3rd of August; and as to the consols and Two-and-half per cents, the tenant for life was benefited and the remainderman prejudiced to the extent of dividends on those stocks attributable to the period of 57 days, that is, the difference between 86 days (being the interval between the 5th of July and the 3rd of August); and therefore, upon the petitioner's own principle, in order to ascertain the pecuniary value of her claim, the gain ought to be set off against the loss, *i.e.* the amount by which she benefited in respect of the consols and Two-and-a-half per cents ought to be deducted from the amount by which she is prejudiced in respect of Reduced and New Threes.

"Now, from what I have hitherto observed, it is clear that the consequences of giving effect to the equity insisted upon by the petitioner would be this, that in every case in which stock, settled in trust for one for life with remainder over, is to be sold, and the proceeds invested in the purchase of real estate, if the purchase is not completed on the day fixed by the contract (which occurs, at least, nineteen times out of twenty), there will be a petition either by the tenant for life, asking that the loss of income may be recouped out of *corpus*, or by the remainderman, asking that the loss of *corpus* may be recouped out of income; and upon every such petition an order must be made, and the costs must be borne either by the *corpus* or by the income.

"The result is, that if the claim made by the petition is to prevail, there will hardly ever be a case of a trust for sale of stock and purchase of land, or even for a change of investment from the funds to real security, or from real security to the funds, without its entailing an application to the Court, either by the tenant for life or by the remainderman, to give effect to such equity.

"Now, we know that for a century past, or more—indeed, we may say from the time when the funds first came into existence—innumerable instances have occurred of trusts of these several descriptions; some executed under the direction of the Court, and some by trustees out of Court; and yet, until the last ten or twelve years, I believe, not a single case can be found in which the Court has given effect to the sort of equity insisted upon by the petition. There have been abundance of cases in which questions as to the relative rights and equities of tenants for life and remaindermen have arisen and been decided; but I am not aware of a single case till 1854, in which a tenant for life has been held entitled to recover out of the *corpus* of the trust property any sum as compensation for dividend with reference to the interval of time which may happen to elapse between the last preceding dividend day and the day of sale of the stock.

"The first case in which the tenant for life was entitled to the benefit of this sort of equity is *Lord Londesborough* v. *Somerville* in 1854 (19 Beavan, 295); but there, as I understand the report of the case, the Master of the

Rolls proceeded entirely on the special circumstances of the case. The only other case that I am aware of in which the benefit was given to the tenant for life is *Bulkeley* v. *Stephens* (3 New Reports, 105) before Vice-Chancellor Stuart, who, if I do not misunderstand the report, treated the case as presenting an exception to the general rule, and rested his decision on the special circumstances of the case with reference to the time at which the stock was ordered to be sold, with a view to the benefit of the estate, which particulars, however, are not stated in the report. The question then comes to this, Are the circumstances of this case of such a special and exceptional nature as to justify the Court in departing from the general rule? The only circumstance which is suggested as a specialty is, that by reason of difficulties in the title the contract was not completed on the day fixed. If this is a special and exceptional case, then out of every twenty such cases probably nineteen would have to be treated as exceptional and special cases.

"And if this is a special and exceptional case several hundreds of cases, equally special and exceptional, have occurred during the last century, in none of which has any such equity been administered.

"To grant the prayer of this petition would be to open the gates to a flood of applications of a similar kind, entailing upon trust properties a heavy burden of expense from which they have hitherto been exempt.

"And I cannot consent to introduce a practice which would be, in my opinion, fraught with such evil consequences."

These cases furnish a good example of the difference, already pointed out, between cases which lay down a general rule and cases which (while admitting the authority of the general rule) depart from the general rule owing to the special circumstances of the particular case.

It is clear, however, that the general rule is that: *No apportionment can be made, on the sale or purchase of stocks, as between the tenant for life and the remainderman, either of the proceeds of the sale, or* (in the case of a purchase) *of the next dividend, but that the first must be treated as capital and the second as income;* and it follows that this being the general rule, apportionment can only be made in special cases *by the order of the Court,* and therefore it is the duty of the trustee to refuse to make any such apportionment, and to leave it for the tenant for life or the remainderman to take the matter into Court for decision.

The whole of the cases dealt with are cases decided before the passing of the Apportionment Act of 1870, but that this has made no alteration in the rule is shown by the case of *in re Duff*, decided in 1886 (30 Solrs. J. 501).

The question there was, whether any part of the purchase money received by the executors for any shares or stock, or other securities carrying interest, belonging to the testator's estate, which were sold during the period during which a dividend or some interest was accruing thereon, but before the day or respective days when such dividends were declared, or such interest became actually payable, ought to be, or to have been treated as capital of the estate.

North, J., held that there was to be no apportionment, but that the whole of the purchase money must be treated as capital. He thought that it was clear that if, in the course of the administration of an estate, a sum of consols was sold during the currency of a half-year there could be no apportionment of the purchase money in favour of the tenant for life of the fund.

On the other hand, if a sum of consols were bought during the currency

of a half-year the tenant for life would be entitled to the corresponding dividend on the purchased fund. HERBERT L. TEBBS.

EXAMPLES OF APPORTIONMENT

£500 capital stock of the National Bank of Scotland, Limited, was sold for £1595 by the trustees of J. Smith, who died on 15th August 1890, and the net proceeds were received on 1st July 1891. Two dividends, at the rate of 15 per cent per annum, were received on 1st January and 1st July 1891 for the bank's financial year ending 1st November 1890, the amount of dividend on each occasion being £37 : 10s.

To find what proportion of the dividends received and of the net proceeds of £1595 is applicable to revenue. The liferenter is entitled to the proportion of the dividend on £500 at 15 per cent from 15th August 1890 to 1st November 1890. He also is entitled to the dividend at the rate of 15 per cent. on £500 from 1st November 1890 to 1st July 1891, as the £500 stock would be earning that dividend during the period. These two amounts are as follows :—

Proportion of dividend on £500 at 15 per cent from 15th August to 1st November 1890, 78 days (£75 × 78 ÷ 365) . .	£16	0	7
Proportion of dividend on £500 at 15 per cent from 1st November 1890 to 1st July 1891 at 15 per cent, 242 days (£75 × 242 ÷ 365)	49	14	6
Total applicable to revenue . .	£65	15	1

£65 : 15 : 1 is the interest at 15 per cent on £500 from 15th August 1890 to 1st July 1891 (78 + 242 = 320 days), as it should be.

A testator died on 30th June 1897, leaving £2000 of National Bank of Scotland stock to be liferented, and the fee given to the Royal Infirmary. The National Bank of Scotland close their books on the 1st November in each year, and the dividend earned during the year is payable in January and July following in equal portions. The dividends received would be as follows :—

On 12th July 1897, balance of dividend at 15 per cent for year ending 1st November 1896.		£150
On 11th January 1898, first half of dividend at 16 per cent for year ending 1st November 1897 . . .	£160	
On 12th July 1898, second half of dividend at 16 per cent for year ending 1st November 1897. . . .	160	
		320

The whole dividend of £150 received on 12th July 1897 would go to capital, being for the period while the testator was alive.

Of the dividend received on 11th January 1898 to account of the dividend for year to 1st November 1897, the liferenter is entitled to receive his share for the 124 days from 30th June to 1st November 1897, and similarly with the second portion of the dividend when received. The liferenter would therefore get :—

On 11th January 1898, $\frac{124}{365}$ths of £160 . . .	£54	7	$1\frac{1}{2}$
On 12th July 1898, „ „ . . .	54	7	$1\frac{1}{2}$
	£108	14	3

This is the interest on £2000 for 124 days at 16 per cent, as it should be.

Commercial Apportionments.—In balancing the books of a commercial or manufacturing concern at any particular date, there are usually certain charges, such as rent, taxes, fire insurance, interest, feu-duty, etc., which have only been partially paid during the period covered by the Profit and Loss Account, and which so far as accrued have to be allowed for and charged against the profit. These charges appear in the Balance Sheet as a liability under the general heading of "Charges accrued," or under specific headings, such as "Rent accrued to date." Similarly, if rents or taxes are paid in advance, an apportionment has to be made, and the amount reserved goes to increase the profit, and appears in the Balance Sheet as an asset under the heading of "Charges paid and unexpired," or under specific headings, such as "Rent paid in advance."

The purpose of a Profit and Loss Account being to show the profit for a specific period, the whole income for that period must be taken into account, whether it has been received or is still due, and any income so outstanding appears as an asset in the Balance Sheet. Care, however, should be taken that all accruing income from rents, interest, etc., which appears as an asset is a good asset and likely to be received, as under no other heading are assets so often over-estimated in Balance Sheets.

In balancing the accounts of a firm yearly or half-yearly, apportionments almost always have to be made if any degree of accuracy is desired, and where a concern changes hands, as in the case of the conversion of a business into a limited liability company, or on the assumption of a new partner, or where it is required to find the amount due to a retiring partner, or to the representatives of a deceased or bankrupt partner, apportionments require to be very carefully made so as to be absolutely fair to all parties. Most items that occur annually are easily apportioned and present no difficulty, but in the case of rents or dividends payable half-yearly, quarterly, or monthly, considerable care must be exercised to arrive at correct results. Thus, to take a practical example: Suppose the business books of a concern are balanced at 30th June, what is the proportion of the rent which should be taken as a liability, supposing the last half-yearly payment of rent was duly paid on 15th May? If the half-yearly rent is taken as £100, the following solutions may be given to the question:—

1. $\frac{46}{365}$ of £200 (the annual rent)
   or
   $\frac{46}{182\frac{1}{2}}$ of £100
   = £25 : 4 : 1, for the period from 15th May to 30th June.

2. $\frac{46}{180}$ of £100
   or
   £100 *less* $\frac{134}{180}$ of £100
   = £25 : 11 : 1, for the period from 15th May to 30th June, reckoning the half-year's rent of £100 for 180 days to 11th November.

Since the 28th of May is the removal term, and the rent paid on the 15th May is for occupation up to the 28th, the following additional solutions may be given of the question if the period of occupation be held to govern the apportionment, and not the date of payment of the rent:—

3. $\frac{33}{365}$ of £200
   or
   $\frac{33}{182\frac{1}{2}}$ of £100
   = £18 : 1 : 8, for the period from 28th May to 30th June.

$$\left.\begin{array}{l} 4.\ \frac{33}{184} \text{ of } £100 \\ \text{or} \\ \quad £100 \textit{ less } \frac{151}{184} \text{ of } £100 \end{array}\right\} = \left\{\begin{array}{l} £17:18:8, \text{ for the period from 28th May to 30th June, reckoning the half-year's rent of £100 for 184 days from 28th May to 28th November (the removal terms).} \end{array}\right.$$

Of the four solutions the first and third are correct on the assumptions made, as they treat the payment as a yearly one. The second and fourth solutions are not correct, as they treat a payment as for half a year, *i.e.* 182½ days, as a payment for 180 and 184 days. In arriving at the above solutions the days have been counted as from the 15th or 28th of May, these dates being thus adopted as the dates of entry. Suppose, however, that the business was begun on the 11th or 28th of November, then the result of counting the days from the 15th or 28th of May is to charge the Profit and Loss Account with rent for half a year plus 46 or 33 days, that is, for 228½ days or 215½ days, whereas the number of days between the 11th and 28th November and the 30th June is 231 and 214 respectively. In such a case, therefore, it would be more correct if the 11th and 28th November be taken as the dates to count from, and the following additional solutions may be given:—

5. $\frac{231}{365}$ of £200 *less* £100 = £26 : 11 : 6.

6. $\frac{214}{365}$ of £200 *less* £100 = £17 : 5 : 2.

From the above it will be seen that the correct method to employ depends upon the special circumstances of each case. The principle, however, always remains the same—that the rent should be charged according to the amount accrued during the period embraced by the Profit and Loss Account.

The Use of Interest Tables in apportioning Sums for different Periods

Where a number of sums have to be apportioned over different periods of time, it is very serviceable to have an easy method of making the apportionment. Interest tables, showing the interest on different sums for any number of days at 5 per cent, such as the well-known tables of the late Mr. James Laurie, published by Messrs. George Routledge and Sons, are very useful for this purpose. The rule to use is, shortly, as follows:— GIVEN THE SUM PER ANNUM, TO FIND THE PROPORTIONATE SUM FOR A CERTAIN NUMBER OF DAYS, MULTIPLY THE SUM PER ANNUM BY 20 (*i.e.* reduce pounds to shillings), AND FIND FROM THE TABLE THE INTEREST AT 5 PER CENT ON THIS NUMBER OF POUNDS FOR THE GIVEN PERIOD. The reason why interest tables at 5 per cent may be used for such questions is seen if we consider that if S be the sum with which we enter or look up the tables of interest at 5 per cent for 15 days, the result given in the table is $S \times \frac{15}{365} \times \frac{5}{100} = S \times \frac{15}{365} \times \frac{1}{20}$. If we enter the table with S × 20, we get as our result $S \times 20 \times \frac{15}{365} \times \frac{1}{20}$, which is equal to $S \times \frac{15}{365}$.

In apportioning any sum under £18 : 5s. (365 shillings) over different numbers of days, the same tables may be used in a slightly different way. Since the interest on a sum for a certain number of days is equal to the interest on the number of days looked upon as pounds for the number of days there are pounds in the sum, we have only to look upon the number

of days as the sum, and the sum as the number of days. Thus, to allocate £13 over 40, 93, and 500 days, we have merely to find from the tables the interest on £40, £93, and £500, for $13 \times 20 = 260$ days at 5 per cent, and we get £1 : 8 : 6, £3 : 6 : 3, and £17 : 16 : 2.

Apportionment In Scots Law.—While generally the principles of the Scots and English Law as to apportionment are, on most points, identical, there are differences which require to be kept in view. In Scotland there has never been any separation between law and equity, so when apportionment at common law is spoken of it includes the two branches treated in the preceding article under "Apportionment at Common Law," and "Equitable Apportionment." In Scotland also, as in England, there is at common law no apportionment with respect to time, the person in right of the property at the time when a payment vests, or by law falls due, taking the whole to the entire exclusion of his predecessor, however recently the latter may have died or transferred the property.

Following the division of the subject usual in Scotland, it is treated under the two heads of apportionment between (1) seller and purchaser, and (2) liferenter and fiar or heir and executor.

I. SELLER AND PURCHASER.—(1) *Rents.*—In conveyances of heritable property a term of entry (usually Whitsunday, 15th May) is specified, and the assignation of rents in the deed then, by Statute, gives the purchaser right to the rents due for the possession following the term of entry according to the legal and not the conventional terms of payment, except in the case of forehand rents, where his right is to the rents payable at the conventional terms after his entry. The legal terms for payment are based on the agricultural year, and are, the first half at Whitsunday after the sowing of the first year's crop, and the second half at Martinmas (11th November) after the reaping. If, therefore, the purchaser of an estate get entry at Martinmas, he would draw the whole rents due thereafter. But where, as is commonly the case, the term of payment is postponed, *e.g.* for a whole year, so that the tenant does not pay the first half year's rent until a year after entering the farm, a purchaser with entry at Martinmas would not be entitled to any rent until eighteen months after his entry, because the two previous payments would be for the crop and year prior to his entry. Forehand rents, *i.e.* those paid before the legal terms, are provided for by Statute as above noted.

In the case of houses, the rents of which are payable at Martinmas and Whitsunday for the half years preceding, there is no difficulty, the purchaser getting the whole rents payable after his entry.

The rents of shootings are apportioned according as the right of shooting was exercised before or after the purchaser's entry.

II. LIFERENTER AND FIAR AND HEIR AND EXECUTOR.—The rules for decision in both these cases are identical. They are really questions of apportionment between capital and income, and almost invariably arise with reference to estates held in trust. The Apportionment Act applies to both Scotland and England, and save in so far as caused by the difference of the subjects dealt with, it has been interpreted similarly in both countries. Decisions in either are therefore cited as of practically equal weight.

(1) *Prices of Investments.*—The liferenter is at common law entitled to the whole *income* of the investment, but no part of the capital. But where investments are sold or bought, the price practically always includes not only capital but also some portion, less or more, of accrued dividend.

The price realised for the stocks or shares must therefore be apportioned so as to separate the dividends from the capital, the proportion representing dividend going to the liferenter. In the same way, when stocks or shares are purchased with the current dividend, a proportion of the current dividend to the date of purchase is applicable to capital. Accordingly when the first dividend is received, the proportion thereof from the date of the last dividend to the date of purchase falls to capital and the balance to revenue. A question may arise when stock is purchased as to whether the proportion falling to capital should be calculated from the date of payment of the last dividend up to the date of purchase, or to the date of actual payment of the price. The general practice, and it is thought the more correct, is to apportion the dividends or interests according to the date of sale and not of settlement. Where a change of investment is made, the date of sale will fix the value of the stock; and assuming that the settlement of the realised stock and the new investment take place on the same day, the apportionment of the price of the stock sold and the dividend on the stock purchased will balance with each other (*Donaldson*, 14 D. 165). Where shares are sold the price falls to be apportioned on the assumption of the expected dividend at the date of sale and not of the actual dividend subsequently paid by the Company (*Cameron's Factor*, 1 R. 21).

(2) *Rents.*—During the subsistence of the liferent, the liferenter enjoys the natural crops and fruits of the subjects so far as actually ingathered by him. In addition to what he has actually gathered during his lifetime, his representatives have the right to reap the crops the liferenter has sown, according to the maxim *messis sementem sequitur.*

Prior to the Apportionment Acts, when the liferenter died between terms his representatives were entitled to no portion of the current rents or interests. If, however, he survived any portion of the Whitsunday term day his representatives were entitled to one-half of the rent for the crop of that year. This rule fell to be applied in reference to the legal and not conventional terms of payment of rent, as before explained. Except in the case of forehand rents, the liferenter and his representatives have the benefit of all rents paid or due during the lifetime of the liferenter.

The law was altered by the Apportionment Acts of 1834 and 1870. The text of the latter, which is the Act now in force, will be found on p. 95 *supra.* The effect of the Act was, as will be seen, to considerably alter the position of liferenter and fiar.

Rents.—All rents other than forehand rents now accrue *de die in diem.* Thus in the case of arable farms where rent is payable at the usual legal terms of Whitsunday after sowing, and Martinmas after reaping, the representatives of a liferenter dying between Whitsunday and Martinmas receive the proportion of the half-year's rent, payable at Martinmas, accrued up to the date of death. In the case of grass farms they take the half year's rent legally due at Whitsunday although the payment thereof may be conventionally postponed until Martinmas after the death of the liferenter

Dividends.—Dividends fall to be apportioned according to the period during which the profits have been earned, and not according to the declared or actual dates of payment. Thus in the case of the North British and Mercantile Insurance Company the dividend earned in each year is payable in May and November following, and the bonus in one sum in May. If the liferenter die on 15th January, his representatives draw the whole dividends and bonus for the year to 31st December previous, all payable after the date of the liferenter's death, and, in addition, a proportion

of the succeeding year's dividend and bonus for the period to 15th January. But a bonus paid by way of return of capital falls entirely to capital. As regards interim dividends, the general practice is to apportion them as received, without reference to the dividend, which may be subsequently paid for the whole year.

Interest.—Where interest falls to be paid to the liferenter on an estimated capital sum or valuation, in lieu of profit, the rate is 4 per cent. Although this rate was allowed, it was observed that, having regard to the fall in the rate of interest on investments of trust monies, it deserved consideration whether the normal rate to be allowed by the Court should for the future be more than 3 per cent. (*Bain's Trustees*, 40 S.L.R. (H.L.) 66.)

Casualties.—Casualties or compositions, payable on entry, fall to the liferenter if he be a liferenter by reservation. If the liferenter's right is by constitution, *i.e.* by grant from another person, he will not be entitled to the casualties, which fall to be added to capital. (*Ewing*, 10 M. 678.)

Duplicands.—Duplicands payable at fixed intervals in lieu of casualties fall to the fiar, and not to the liferenter, when the latter is a liferenter by constitution and not by reservation (*Ewing*, 10 M. 678; *Gibson*, 22 R. 889); but where the trust estate consists of superiorities, with duplicands falling in yearly, the liferenter is entitled to the duplicands as part of the annual income. (*Montgomerie Fleming's Trs.*, 3 F. 591: *Ross' Trs.*, 40 S.L.R. 112.)

Grassums.—Grassums payable under contracts of ground annual at regular periods fall to the fiar, being of the nature of an extraordinary bonus. (*Ewing, supra.*)

Burdens.—Annual rates and taxes and other proper assessments are apportionable according to the period of assessment, and do not depend upon the receipt of the rents, backhand or forehand.

Minerals.—In the case of minerals actually wrought, the liferenter by reservation may continue to work them in the ordinary course. Otherwise, minerals, being exhaustible, are the property of the fiar, except to this limited extent, that the liferenter is entitled, out of the minerals which are being worked, to supplies for the estate and mansion house. In ordinary trusts the intention of the testator rules. One element of importance in construing that intention will be the probable date of exhaustion of the minerals. If it be distant, the presumption is in favour of the liferenter receiving the ordinary annual returns. If it is likely to take place within a short period, the presumption is that the returns are of capital and not of income.

Repairs.—The general rule as to repairs as between liferenter and fiar, is that ordinary repairs necessary for maintaining the subject are borne by the liferenter, while extraordinary repairs, or those necessary for the renewal of the subject or the restoration of ordinary natural decay, are borne by the fiar. In the case of fire or other unavoidable accident, neither the fiar nor the liferenter is bound to make good the loss.

Expenses.—The whole expenses incurred in realising and investing the estate or in changing securities upon which it is placed, or any extraordinary expenses brought upon the trust estate in the course of its administration, *e.g.* as of actions affecting interests as well as capital, form proper charges against, and should be paid out of capital. The ordinary annual expenses of managing the trust, such as the cost of recovering income and paying it over, form proper charges against income (*Pearson* v. *Casamajor*, 1840, 2 D. 1020. *Baxter and Mitchell* v. *Wood*, 1864, 2 Macp. 915. *Smith* v. *Smith's Trustees*, 28 S.L.R. 38). The Auditor of the Court of Session, however, takes the view that only the expenses of changing securities at the beginning of

the trust should be charged against capital, while changes of investments during the subsequent administration should fall upon income.

Appreciation.—The increase of value. Assets sometimes appreciate through changes in the markets or other causes. Any temporary increase should not be taken notice of, but when there is a reasonable prospect of the increase in value being permanent an adjustment should be made.

Appropriation of Payments.—Where one person owes another several debts and makes a payment, the question arises as to which of these debts such payment shall be appropriated. The debtor has the right to declare, in the first instance, in respect of which debt the payment is made, and failing his doing so then the creditor has the right, and in default of either, the payment is held to be in respect of the debt of longest duration.

Arbitrage (Stock Exchange).—On the Stock Exchange arbitrage dealings are those which are done by houses in London—for example, to cover other transactions which may be done in Paris, or Berlin, or New York, or in some other distant place. The arbitrage dealer learns by telegram from some distant place that his colleagues have bought or sold certain securities at advantageous prices. His business, then, is to sell or buy in London, if possible, at a better price for the same securities. The nicest attention to the rate of exchange, modes of transit, insurance, and loss of interest must be given to these transactions.

Arbitrage is conducted under the title of "shunting" between London and Liverpool, or Manchester and Glasgow, the favourite stocks operated upon being British railway stocks. "Shunting" has no complications of exchange, etc., as in "Arbitrage" proper, the chief essential being to be first in one market with a change in price from another, and buy or sell before the prices are level.

Arbitrage (General Business) is used in general business to signify international dealings in Stock Exchange securities, bullion, specie, bills of exchange, etc. When the price of a security is higher in one place than another, it is said that there is a margin between the two places in that particular security, and dealers, whenever they discover such a margin, take advantage of it by effecting purchases in the cheaper and sales in the higher market. A settlement is effected either by a reversed buying and selling of some other securities by remittance of bills of exchange, or by the issuing of a draft. The first method is only occasionally convenient, and there is usually a balance which must be met either by the second or third method, and these two methods are, of course, affected by fluctuations in the rate of exchange. The rate of exchange, therefore, enters very largely into questions of arbitrage; the margin between the buying price and the selling price must be sufficient to cover all these risks, together with the outlay for carriage, insurance, bill stamps, brokerage, etc. The natural effect of arbitrage operations is to maintain the prices of securities in all places at the same level, as immediately dealers enter one market with a view of buying because securities are cheaper, their action forces up the price, and in the same way their action reduces the price when they are selling in a dear market.

Arbitrage (Exchange).—The difference in the rates of exchange, that is, the price payable for bills of exchange on foreign countries in different places, occasions arbitrage transactions in exchange. Thus, if bills on demand on Berlin are dearer in London, and bills on

London can be bought in Berlin cheaper, it will be profitable for a Berlin banker to buy the latter, and to obtain in exchange bills on Berlin. He must, however, provide for the expenses of postages, bill stamps, brokerage, etc., and in the case of long bills allowance must be made for the rates and discount. By competition the rates of exchange in all main centres very nearly correspond with each other.

Arbitration.—*Definition.*—An arbitration is a formal procedure in the nature of a judicial inquiry, having for its object the determination of a difference or differences which may have arisen between two or more persons as to their respective legal rights and interests. An arbitrator's duty is to decide, not merely to advise, and the object of an arbitration is to settle past differences, not, as is the case with a valuation, to prevent differences arising. Further, the referee of a match or race is not an arbitrator. The questions decided may be both of law and of fact, and not only may contractual rights be the subject of arbitration, but damages for personal wrongs and torts may also in this way be assessed and awarded. A code of arbitration law now exists for England in the shape of the Arbitration Act 1889, 52 & 53 Vict. c. 49, and most arbitrations in that part of the empire take place in accordance with this code. It will be convenient here to follow the distinction drawn by the Act between references out of court and references under order of Court.

I. References by Consent out of Court.—*Who may Refer.*—To have legal significance, a reference must be entered into by parties possessed of the legal capacity to dispose of rights and to contract obligations. In very few cases is there absolute incapacity. An infant's submission is voidable only, not void, and the performance of the award may be secured by the bond of the father or guardian. Parties of full capacity joining with an infant in a reference cannot escape liability by reason of the infant's repudiation. Any married woman has, since the Married Women's Property Acts 1882 and 1893, control over her separate estate not restrained from anticipation as if she were a *feme sole*, and may therefore refer any questions relating thereto. A husband may refer disputes relating to chattels of his wife which he has the ability to reduce into his possession, and an award in his favour will constitute a reduction sufficient to bar repudiation of it on the part of the wife after his death. The interests of a lunatic can usually be referred by his committee. A bankrupt cannot refer effectively in competition with his trustee, but may be personally bound on such a reference. Corporations and corporate bodies must signify their assent to a reference in the manner applicable to their case. Persons without a personal interest may sometimes bind themselves, *e.g.* agents not authorised by their principals to refer. Agents generally have no implied authority to bind their principals to this extent, a rule which holds good also of copartners acting for one another. Business usage in some cases gives a special right to refer, *e.g.* underwriters settling losses as agents for other underwriters, counsel acting on behalf of clients, and, to a somewhat less extent, solicitors. A trustee in bankruptcy may refer disputes with the concurrence of the committee of inspection, and that even in the case of the estates of deceased persons. And trustees, executors, and administrators may as a rule refer unless expressly prohibited by the trust-deed, will, or other authority under which they act.

Matters Competent to be Referred.—Speaking generally, the realm of arbitration is coextensive with that of civil rights. Usually questions of fact form the main feature, but not infrequently questions of law have to

be decided incidentally or by themselves. By a multitude of statutes facilities are given for obtaining awards of compensation or damages where lands or properties are authorised to be taken, or suffer injury, or other interests are threatened through works of a public nature, such as railways, canals, docks, piers, waterworks, gasworks, electric lighting operations, markets and fairs, cemeteries, town improvements, allotments of lands, copyholds, enclosure of commons, military ranges, public roads, sewers, and the like, in the case of tithes, boundaries, dangerous coal-mines, etc., as well as where differences have to be settled between two or more public bodies, or between such bodies and the public, and in the case of charities, friendly societies, disputes of workmen, injuries to workmen, etc. Actions before the court may be referred by consent as well as in the cases aftermentioned. [See below. "II. References under Order of Court."]

The Submission.—No special form is required, provided the intention of the parties to be bound by the arbitrator's decision is clearly indicated. The arbitrator or arbitrators should be named, and the matter in controversy generally stated. To be within the Arbitration Act 1889 a submission must be in writing, but a parol submission may also be acted upon, and not infrequently a written submission is subsequently altered or supplemented by parol. A parol submission is, however, inconvenient, being more or less indefinite, and the award under it being enforceable only by ordinary action and not by attachment, as in the case of a reference within the Arbitration Act. If the agreement under which the submission is made specifies that it shall be in writing, it must be so framed. Under the Public Health Act, 1875, 38 & 39 Vict. c. 55, a parol appointment of an arbitrator is ineffectual. And if the subject-matter is land, or an interest in land or other interest, contracts in relation to which have to be in writing as a condition precedent to proceedings being taken upon them, a written submission becomes a practical necessity.

A written submission within the Arbitration Act may be either by deed or by other writing not under seal. It need not form a document by itself, but may be included in an agreement of wider scope. It is often constituted by mutual bonds, each party thus binding himself under a penalty to abide by the award. Or each party may execute a bond in favour of the arbitrator. In an action before the court, if a reference is agreed upon, the endorsement by counsel of the fact upon the brief, or the written consent of the respective solicitors, constitutes a sufficient submission. The signature of both parties is not required, nor is it an essential matter to include the arbitrator's name (Arbitration Act, 1889, sec. 27; cp. Arbitration (Scotland) Act, 1894, 57 & 58 Vict. c. 13, sec. 1). If the value of the subject-matter exceeds £5, a sixpence agreement stamp is required on the agreement to submit, and a submission by bond must be stamped accordingly.

It should be noted that the court has no power either by statute or at common law or in equity to compel a person to nominate an arbitrator. Nor can parties by any agreement to refer oust the jurisdiction of the courts, though if arbitration is a condition precedent to the right of action, as where it is agreed to fix by this means whether there is or is not liability, what amount shall be payable, or the manner or time of payments, then the arbitration must first be held. But, if arbitration has been agreed upon, and there is failure to nominate the arbitrators, or one of the arbitrators, application may be made to the court to make the nomination (Arbitration Act, 1889, sec. 5; Arbitration (Scotland) Act, 1894, secs. 2, 3).

By the Arbitration Act 1889, sec. 1, a submission, unless a contrary intention is expressed therein, shall be irrevocable except by leave of the court, and shall have all the effect of an order of court. Misconduct under it, therefore, will be punishable as contempt of court. Legal proceedings instituted by one party to a submission against another will be stayed on application to the court.

Who may be Arbitrator.—When the choice of an arbitrator is the voluntary act of the parties to a submission, natural or legal disabilities known to them will not disqualify him. It is desirable, however, that he should be free from defect, and the court will seldom appoint one who suffers from some legal disability. In every case the arbitrator should be above suspicion of bias, any financial interest in the result of the submission being specially objectionable. If an arbitrator is opposed to one of the parties to the submission in litigation, it is a ground for revoking the submission. Sometimes the statute or authority under which the reference is held limits the selection to a certain class. Any objection to an arbitrator's qualifications must be made before the award is issued.

Duties of an Arbitrator.—An arbitrator's authority dates, unless otherwise agreed, from his acceptance, express or implied, of the submission. The phrase "entering on the reference," however, means the actual beginning of the hearing. In judging of his duty his guiding principle should be to act as a judge would do, and to follow, as far as possible, the rules and principles of judicial tribunals. In the absence of special provision to the contrary, he is presumed to have power to decide both law and fact. His award may be made the moment his authority commences, and must be made within the time limit provided, or within three calendar months after entering on the reference unless an extension of time is expressly accorded. The time for making an award may, from time to time, be enlarged by taking out a summons before a master. The limit being reached without extension, the arbitrator is *functus officio*.

Determination of an Arbitrator's Authority.—Unless determined in the manner just mentioned, an arbitrator's authority continues until the issuing of the award, or until it is revoked. As the issuing of the award terminates his authority, an arbitrator cannot alter or revise it except in the case of clerical mistakes accidentally made. Revocation is express or implied. At common law any party to a submission was at liberty to revoke an arbitrator's authority before his award was made. But at the present day, by the Arbitration Act 1889, a submission, and therefore an arbitrator's authority, is irrevocable except by leave of the court or a judge, unless otherwise expressly provided. Application to revoke should be by summons to a master in chambers. The following are good causes for so applying: non-procedure with the reference within a reasonable time; improper admission of evidence; secret examination of witnesses; corruption; litigation between the arbitrator and one of the parties. Mere errors of discretion, however, are not as a rule good causes of revocation. Also, a change in the character of an arbitrator is not sufficient, and even his bankruptcy will not necessarily be regarded as a disqualification. Should an arbitrator die before award made, his place can be filled by the court or a judge under sec. 5 of the Arbitration Act 1889. The death of a party to a submission does not abate an arbitration, nor will the marriage of a female party to a submission. But, as we have seen, an arbitrator's authority will lapse on expiration of the time limited for making his award.

Procedure on a Submission.—The first matter is to serve the sub-

mission on the arbitrator, which should be done without delay. That being accepted, the mode of procedure is entirely at the will of the arbitrator within the limits of fairness and justice. If counsel are desired to be employed, the arbitrator and the other side should receive notices to that effect. An arbitrator may, however, decline to hear counsel, or to allow any strangers to be present. Delegation of an arbitrator's duties is not allowed, though expert opinions may be taken in order to arrive at a decision. At the hearing, parties will follow the practice in courts of law: first, he upon whom is the burden of proof will begin, then the defending party will state his case, and, lastly, both will sum up and reply respectively. As to enforcing the attendance of witnesses, see the Arbitration Act 1889, secs. 8, 18, and R.S.C. 1883, O. 36, r. 49. In general, witnesses give their evidence upon oath, but swearing may be dispensed with by consent. As to admission of evidence, all material information should be accepted, and an arbitrator should hesitate before declining evidence. Witnesses should be heard in presence of all the parties to the submission, and irregularities in examination should be avoided. As to calling for documents, usually there is express provision made (cp. R.S.C. 1883, O. 36, r. 50). All the evidence having been taken, the arbitrator should declare the case closed, and proceed to consider his award. Should he consider it necessary, he may, notwithstanding such declaration, re-open the case and hear further evidence. During the entire hearing an arbitrator should take notes of the evidence, and in all important cases the services of a shorthand writer should be had.

The Umpire.—By the Arbitration Act 1889, Schedule I. (*a*), unless otherwise provided, the reference is to a single arbitrator; and (*b*), if the reference is to two arbitrators, these may at any time before making an award appoint an umpire. As to the appointment of an oversman in Scottish arbitrations, see Arbitration (Scotland) Act 1894, sec. 4. Whenever the submission is to two arbitrators, provision is usually made therein for the appointment of an umpire. If not, the appointment may be made under the statutory provisions just mentioned. No special form need be followed in making the appointment, but it is better that it should be in writing. An umpire's powers and duties are generally the same as those of a single arbitrator, and he is bound by the same rules. He should, however, act on his own initiative, unbiassed by anything that may have taken place before the arbitrators. His authority will endure for the period assigned him unless that period is from time to time enlarged.

The Award.—In point of form this will follow the directions of the submission, and it is required by the Arbitration Act 1889 to be in writing unless otherwise provided. Any form of words constituting a plain and precise decision of the questions at issue will be good. No introductory recitals are necessary beyond a short statement of the submission, the authority given, the subject in dispute, and the consent to the award of costs. The award should be contained, as a whole, in one document, and while it may be made alternative, or even conditional, it should be a final decision of all the matters in dispute. If it amounts to this, the courts will view its validity with favour, but it may be void if it fails to decide a question specifically stated. It should not reserve further power for the performance *in futuro* of judicial acts in connection with the matters submitted. So, if money is awarded, the amount should be fixed with certainty, and there should be no doubt left as to the time for payment. And, generally, an award should be consistent and capable of being carried out. It does not follow, however, that the whole award would be bad by

reason of part not being able to be sustained, for the bad portion may possibly be separable from the good.

If questions relating to personal property alone are submitted, an award would be invalid which sought to bind a person's liberty or real property. So an award that two specified parties should intermarry cannot be enforced. Nor can an award which directs an illegal act to be done be enforced. A conveyance, however, may be directed to be signed; or, as an alternative, damages can be awarded. Past interest, but not, as a rule, future interest, may be awarded, and there is no power without special authority to order an indemnity against future contingencies.

Sometimes an award takes the form of a special case for the opinion of the court, and even in the course of a reference the opinion of the court may be taken by an arbitrator for his guidance.

As to costs, under the Arbitration Act 1889, sec. 2, these are in the discretion of the arbitrator. The submission ought always to state expressly that power to award costs is to be part of the arbitrator's authority. Costs as between solicitor and client may generally be awarded, but at common law an arbitrator has no power to order the costs to be taxed as between solicitor and client.

The award being completed, the arbitrator should take a copy of it. He may then give notice to the parties that it is ready, and deliver the original to the party who takes up the award, and the copy to the opposite party if he applies for it. Sometimes the submission provides for delivery to the parties by a certain day, but the more usual practice is for the arbitrator to retain the award in his hands until his fees and charges are paid. To be "available for any purpose whatever," the original award should be duly stamped in accordance with the Stamp Act 1891, 54 & 55 Vict. c. 39, sec. 14 (4). It is not, however, the arbitrator's duty to provide the stamp. The duty payable on an award in England or Ireland, and on an award or decreet-arbitral in Scotland, are as follows:—

In any case in which an amount or value is the matter in dispute—	£	s.	d.
Where no amount is awarded, or the amount or value awarded does not exceed £5	0	0	3
Where the amount or value awarded—			
Exceeds £5 and does not exceed £10	0	0	6
„ 10 „ 20	0	1	0
„ 20 „ 30	0	1	6
„ 30 „ 40	0	2	0
„ 40 „ 50	0	2	6
„ 50 „ 100	0	5	0
„ 100 „ 200	0	10	0
„ 200 „ 500	0	15	0
„ 500 „ 750	1	0	0
„ 750 „ 1000	1	5	0
„ 1000	1	15	0
In any other case	1	15	0

Enforcement of an Award.—In its general effect an award is a final and conclusive judgment both as to fact and as to law fixing the respective rights of the parties to the submission for all time without appeal. Consequently the court has no jurisdiction to alter or amend an award; the proper course is to set it aside or remit it to the arbitrator (cp. Arbitration Act 1889, secs. 10, 11). Application with a view to this must be made in a

reasonable time, or the cause of the delay should be satisfactorily explained to the court. On the other hand, if the award is unobjectionable in itself, and no fresh material evidence has been discovered since it was made, it may, by leave of the court or a judge, be enforced in the same manner as a judgment or order to the same effect (cp. Arbitration Act 1889, sec. 12). The application for leave is by summons before a master in chambers. The summons should be intituled "In the matter of an arbitration between A. B. and C. D. And in the matter of the Arbitration Act 1889," and should crave "leave to enforce the award dated in the above arbitration in the same manner as a judgment or order to the same effect." The original award and a duplicate thereof should be produced, together with an affidavit as to facts.

After the award is made no action is maintainable by either party in respect of any matter within the scope of the submission, even though not in fact brought under the arbitrator's notice, unless the omission was accidental or wrongfully intended. The award, too, binds not only the parties to it, but all persons who could claim through it or were privy to it. It is not, however, conclusive as regards strangers, though it may in certain circumstances be available as evidence against such.

If demand for performance has been made and refused, the person of whom the demand has been made will be in contempt. Attachment will lie in all cases in which it is allowed under orders of court.

Remuneration of the Arbitrator.—The amount and mode of settling this may be expressly stated in the submission, or form the substance of a distinct agreement. In the absence of agreement there is in general an implied promise to pay for the services rendered. Usually the arbitrator himself settles what he considers his proper remuneration, but excessive fees must not be charged, and will be reduced by the court on an application for taxation. The sum need not be stated in the award, but when the latter is ready for delivery and the party entitled to receive it is notified of that fact, he may at the same time be notified of the fees to be paid before possession of the document is transferred to him. An arbitrator has a lien for his reasonable costs, fees, etc., on the submission, the award, and documents in his hands other than such as have been put in evidence.

II. REFERENCES UNDER ORDER OF COURT.—By the Arbitration Act 1889, sec. 13 (1), the court or a judge has power to refer any question arising in a cause or matter other than a criminal proceeding by the Crown for inquiry or report to an official or special referee; in which event (2), the report of such official or special referee may be adopted wholly or partially by the court or judge, and if so adopted, may be enforced as a judgment or order to the same effect. And by sec. 14, in any cause or matter as above, (*a*) if all the parties interested consent, or (*b*) if there is necessity for a prolonged examination of documents or for a scientific or local investigation; or (*c*) if the question consists wholly or in part of matters of account; the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court. The questions so referred must not be such as it might prove unnecessary to decide, but must be properly in issue. The report made may be adopted *in toto* by the court or judge, or it may be remitted back for further consideration. If the report disposes of the action, a motion may be made for judgment. Power to award costs may be given by the court, but if the order is silent on the subject they will follow the event. The court fee on a reference before an official referee is

10s. for every hour; the remuneration to be paid a special referee or arbitrator is fixed by the court.

A county court action may also be referred by the judge with consent of the parties (County Courts Act 1888, 51 & 52 Vict. c. 43, sec. 104). The same fees are payable as on a judgment by default, but where the reference is to the registrar the ordinary hearing fee must be paid.

The Court of Quarter Sessions may also refer matters with consent of the parties, the award being capable of being entered as the judgment of the sessions (12 & 13 Vict. (1849), c. 45, sec. 13).

REFERENCES.—Russell. *Arbitration and Award*, 8th ed. 1900.—Redman. *Concise Treatise on Arbitration and Awards*, 4th ed. 1897.—Bell. *Arbitration (in Scotland)*, 2nd ed. 1877.—Wood and M'Phail. *Arbitration (in Scotland)*, 1900.

John R. M'Ilraith.

Arithmetic.—Arithmetic is that branch of mathematics which treats of numbers and of the method of computing by means of them. The subject naturally divides itself into (1) the conception of number; (2) the representation of numbers; and (3) the principles of computation.

1. *The Conception of Number.*—It is impossible to define number or quantity, that is, these expressions are so simple in themselves that it is impossible to find simpler terms in which to express them. The conception of number is attained slowly through experience by the child. Adult savages have been discovered with no conception of number beyond ten, the number of their toes or fingers; at all events, no expressions have been found in their language for higher numbers than ten. Our conception of large numbers is not absolute, but is to a great extent a matter of comparison. Thus, 750,000 is clearer to us as three-quarters of a million than as seven hundred and fifty thousand units. The power to form a direct and absolute conception of numbers is very limited, but the relative magnitude of numbers can be exactly expressed. The system of notation in common use for numbers enables us to compare numbers of all magnitudes with any degree of accuracy which we may desire. Thus, the proportion which the circumference of a circle bears to its diameter, although it cannot be stated with arithmetical exactness, has been calculated to as many as 200 decimal places. The significance of the last decimal place it is physically and mentally impossible to grasp or even illustrate, that is, we can in the physical world get no illustration with which to compare the magnitude of the 200th figure. Thus, if a circle were described from a point on the earth as its centre, and with a radius as long as the distance of the farthest star that can be seen with the most powerful telescope, then the radius of the circle being known, the circumference of the circle could be computed from it, but an error even in the 30th decimal place would be so relatively small that it could not be detected.

In all systems of number numerical conceptions are facilitated by methods of grouping. Thus, in the ordinary grouping of 10, 19 and 18 are associated with the centre in the group, and hence the French *duodeviginti* and *undeviginti*. This same principle of association no doubt gave rise to the Roman ix. and xl., etc.

2. *The Representation of Numbers.*—Numbers are represented either in words or by particular characters or symbols. It is only when numbers are represented by symbols that they can be of use in arithmetical calculations to any extent. The two methods of representing numbers now in use are the Roman and the Arabic. The origin of the cross used as one

of the symbols in the Roman system may have originated in one stroke being taken to represent a unit, and after ten of those had been put down a stroke would be drawn across in a slanting direction, thus making a cross. The following are the chief Roman numerals:—

I represents	1,	L represents	50,
V „	5,	C „	100,
X „	10,	D „	500,

M represents 1000.

To express a given number in Roman numerals, take such of the above letters as amount in their sum to the given number. In order to have as few letters as possible, the higher values are adopted where possible, the numeral of highest value being placed to the left; thus, to express 7 in Roman numerals, we write VII. If a letter is preceded by one of smaller value, the latter is to be deducted from the greater value, thus IV = 5 − 1 = 4, and CM = 1000 − 100 = 900. The Roman numeral D is sometimes represented by I$\supset$, and where another $\supset$ is added it increases the number tenfold; thus I$\supset\supset$ = 5000. A bar placed over M increases the value a thousandfold; thus $\overline{\text{M}}$ = 1,000,000.

3. *The Principles of Computation.*—The principles of computation, or the making of calculations by means of numerical characters, is the distinctive province of arithmetic, and that system of representation of numbers or notation, as it is called, must be the best which gives the fullest facilities for making calculations.

In the simplest form computation is carried on by means of counters or by balls strung on rods or threads. Of this the *abacus* of the Romans is an example. These methods, however, are very rude, although they are still employed in teaching young children. The systems of notation used prior to the adoption of the Arabic system are very clumsy, and with them the simplest process involves a great amount of labour. Any one will be convinced of this who takes the trouble to make a few simple calculations by means of Roman numerals. In fact, the Romans themselves seem to have been compelled to make most of their calculations by the aid of the abacus. The Greeks used their alphabet, consisting of twenty-four letters and three additional characters, and to distinguish the numeral letters an accent was written after the last. Fractions were indicated by a space between the integers they were fixed to and the numerator of the fraction, and the denominator was written like an index in the Arabic notation. The application of the Arabic notation to decimal fractions appears to have been made by Simon Stevin de Bruges, also called Stevinus, who wrote about 1585, and who may be said to have been the author of decimal fractions.

In the Arabic system of notation which is in general use, the basis or radix is ten, and every number may be expressed by combinations of the ten figures—1, 2, 3, 4, 5, 6, 7, 8, 9, 0. The cipher or zero is simply of value to keep the other figures in their proper positions. In a row of figures each place towards the left increases the value of the figure ten times. Thus, the number 564 is equal to five hundreds, six tens, and four units. A digit followed by two figures expresses hundreds; by three figures, thousands; by six figures, millions; by twelve figures, billions, etc.

Numeration is the art of reading figures expressed as numbers. The following shows the places of the various figures:—

1st. Units.
2nd. Tens.
3rd. Hundreds.

4th. Thousands.
5th. Tens of thousands.
6th. Hundreds of thousands.
7th. Millions.
8th. Tens of millions.
9th. Hundreds of millions.
10th. Thousands of millions.
11th. Tens of thousands of millions.
12th. Hundreds of thousands of millions.
13th. Billions.

For example, the figures 6,203,470,853,609 are read thus: six billions, two hundred and three thousand, four hundred and seventy millions, eight hundred and fifty-three thousand, six hundred and nine. When the number of figures exceeds three it is usual to mark them off in groups of three from the right by means of commas, as shown in the above example, and this greatly facilitates reading the figures.

The convenient principle of numeration by which the ten signs are made to stand for all numbers by simply changing their position is applied to the different tables of money, weights, and measures used, but, unfortunately, the decimal basis is not adopted in this country. Thus, in the case of money we have pounds, shillings, and pence, and we have separate columns for each. Under this system of numeration a number in the second column to the left means twelve times as much as the same number in the first column. A number in the third or pounds column is twenty times as great as the same figure in the second column, or two hundred and forty times as great as the same figure in the first column. A decimal system of weights and measures is immensely superior to a mixed system of numeration, and any country not having such a system is very much handicapped compared with another country having a decimal system of money, weights, and measures.

Signs

To facilitate calculations the following signs are used:—

1. *Addition.*—$7 + 5$ means that 7 is to be added to 5, and the expression is read 7 plus 5.

2. *Subtraction.*—$7 - 5$ means that 5 is to be taken from 7. The expression is read 7 minus 5.

3. *Multiplication.*—7×5 means that 7 is to be multiplied by 5, or that 7 is to be taken 5 times. The expression is read "the produce of 7 and 5," or "as 7 unto 5." 7 is termed the multiplicand, 5 the multiplier, and the result the product.

4. *Division.*—$7 \div 5$ or $\frac{7}{5}$, means that 7 is to be divided by 5. The result is the quotient of 7 and 5, and is read "7 divided by 5." 7 is termed the dividend, 5 the divisor, and the result the quotient.

5. *Equality.*—When two numbers or expressions are of equal value the sign = is put between them. Thus: $7 + 5 = 12$.

6. *Brackets* are used to enclose numbers to show that what is within the bracket must be first made into one before the operations indicated by the signs outside of the bracket are performed. Thus: $9 - (6 \times 2 - 5)$ means that the value of what is within the bracket is first to be found, and then subtracted from 9. When a figure stands before an expression enclosed in brackets without a sign between them, it is meant that the enclosed expression, after it has been simplified, is to be multiplied by the figure; thus:

$9(6 \times 2 - 5)$ means that $(6 \times 2 - 5)$ is to be resolved into a simple value, and thereafter multiplied by 9.

Addition and Subtraction

All processes in arithmetic consist entirely of the increase or diminution of numbers. The word calculation is derived from the Latin word *calculus*, meaning a pebble, and every calculation, given sufficient time and a sufficient number of pebbles, could be made by increasing or diminishing various heaps of pebbles. Multiplication and division are simply methods of arriving by one operation at the result attained by adding and subtracting several times.

The process of finding the sum of two or more numbers is called addition, and the result is called the sum of the numbers. To add sums in Arabic numbers the units are first summed, and their sum is divided into units and tens; the units are put down for the sum of the units, and the tens are carried to the next column, which is the tens column. This column is similarly added, the complete hundreds being carried therefrom to the next column, and so on.

Subtraction is the process of taking one number from another. When this is done the number which is left is called the difference or remainder. The process of subtraction depends upon the principle that the difference of two numbers is not altered if the same number be added to or subtracted from the two numbers. Thus, to find the difference between 74 and 28, 28 is put under 74, as shown:—

74
28

We cannot subtract 8 from 4, and accordingly, we add 10 to the 4, making it 14, and add 10 to the lower figure, not to the 8, but to the two tens, making it three tens. 8 from 14 leaves 6, which we put down, and then 3 from 7, and there are 4 left. The method is similar for hundreds, thousands, or any larger sum. The number to be subtracted is called the subtrahend.

Multiplication

The principle upon which the rule for the multiplication of numbers is founded is, that if any quantity is to be taken a number of times, the result will be the same if each one of its parts is taken the same number of times. The rule for the multiplication of figures is: Place the multiplier under the multiplicand so that the units of the one are under the units of the other. Multiply the whole multiplicand by each figure of the multiplier, and place the unit of each line in the column under the figure of the multiplier from which it came. Then add the lines column by column. Thus, to multiply $365 \times 101{,}001$ is the same as multiplying by $100{,}000 + 1000 + 1$, and omitting the ciphers, the working is as follows:—

```
   365
101,001
--------
   365
  365,
36,5
--------
36,865,365
```

23,707 × 4,567 is got as follows:—

```
  23,707
   4,567
---------
 165,949
1,422,42
11,853,5
 94,828
---------
108,269,869
```

There are various short ways of multiplying by certain figures. Thus, the shortest way of multiplying by 5 is to annex a cipher and divide by 2, since $5 = \frac{10}{2}$. To multiply by 25 annex two ciphers and divide by 4, since $25 = \frac{100}{4}$. To multiply by 9 annex a cipher and subtract the number, since $9 = 10 - 1$.

In multiplying the great secret of obtaining expertness appears to be to think out each step rather than say it, and to do the steps as far as possible in one thought. Thus, in multiplying two numbers together the whole process is shown in the following example, where the unaccented figures are those which are carried forward :—

670383	
9876	
4022298	4′0′, 42′, 2′, 22′, 49′, 18′
4692681	4′6′, 49′, 2′, 26′, 58′, 21′
5363064	5′3′, 56′, 3′, 30′, 66′, 24′
6033447	6′0′, 63′, 3′, 34′, 74′, 27′
6620702508	

This may be somewhat curtailed, and the labour shortened by finding the summations at each step, as follows :—On the right is the process of forming the second line, which gives the result of the multiplication by 76, the third line completes that by 876, and the fourth line by 9876.

670383	
9876	
4022298	8′ ; 21 and 9 are 30′ ; 59 and 2
50949108	are 61′ ; 27 and 2 are 29′ ; 2 and
587255508	2 are 4′ ; 49 and 0 are 49′ ; 46
6620702508	and 4 are 5′0′.

Division

The principle upon which the rule for the division of numbers is founded is, that if any quantity is to be divided into another quantity the result will be the same if all the parts of the second quantity are divided by the first. The rule is: Write the divisor and dividend in one line and place a parenthesis on each side of the dividend. Take off from the left of the dividend the least number of figures which make the number greater than the divisor, find what number of times the divisor is contained in these, and write this number as the first figure of the quotient. Multiply the divisor by the last-mentioned figure, and subtract the product from the part taken off the left of the dividend. On the right of the remainder place the figure of the dividend which comes next after those already separated. If the remainder thus increased be greater than the divisor find out how many times the divisor is contained in it. Put this number at the right of the first figure of the quotient and repeat the process. If the divisor is still too great, add a cipher to the quotient and take down the next figure of the dividend, and so on. Proceed in this way until all the figures of the dividend are exhausted. Thus, to divide 36,326,599 by 1342, the process is as under, in which the first example is worked out using ciphers, and the next example with ciphers omitted :—

```
1342)36,326,599(20000 + 7000 + 60 + 9
     26,840,000
     ----------
      9,486,599
      9,394,000
      ---------
         92,599
         80,520
         ------
         12,079
         12,078
         ------
              1
```

```
1342)36,326,599(27069
     26,84
     -----
      9,486
      9,394
      -----
         92,59
         80,52
         -----
         12,079
         12,078
         ------
              1
```

Division may be simplified by performing the subtraction step by step as each subtrahend is found. This is shown by the following example, where the full details are first given, and alongside of them only the figures which need be written down. The 26,577 in the third line is obtained from 165,042 as follows: the multiplier being 5, 15 and 7 are 22, 47 and 7 are 54, 35 and 5 are 40, 39 and 6 are 45, 14 and 2 are 16.

```
27693)441972809662(15959730
      27693
      -----
      165042
      138465
      ------
       265778
       249237
       ------
        165410
        138465
        ------
         269459
         249237
         ------
          202226
          193851
          ------
           83756
           83079
           -----
            6772
```

```
27693)441972809662(15959730
      165042
       265778
        165410
         269459
          202226
           83756
            6772
```

Decimal Fractions

A fraction whose denominator is 10, or a power of 10, is called a decimal fraction, or simply a decimal.

The advantage of using decimal fractions in all calculations is that they do not require to be reduced to a common denominator as is the case with vulgar fractions.

The multiplication of a decimal fraction by 10, or a power of 10, is performed by removing the decimal one place to the right for each power, adding ciphers, if necessary, to make up the required number of places. Division is similarly performed by removing the decimal point to the left, prefixing ciphers to the dividend, if necessary, to make up the required number of places. In the case of recurring decimals, instead of adding ciphers to make up the required number of places, the repeating figures would be added for that purpose.

Multiplication of Decimals

In practical calculations decimals are very much used, and a sufficient degree of accuracy is usually obtained for ordinary business purposes by taking the fraction to four or five places of decimals, that is, any power involved in the manipulation of the decimal fraction is usually inappreciable if four or five places of decimals are used. Thus, in most monetary transactions it is sufficient if the result is correct to the nearest penny, but in a number of cases all that is required is accuracy to the extent of the nearest number of pounds. The following is the rule for multiplying decimals together so as to retain in the answer only a certain number of places:—Let it be desired to retain n decimal places. Reverse the multiplier, leaving out the decimal points, and place it under the multiplicand so that every place of the multiplier has a figure or cipher above it. Proceed to multiply, beginning each figure of the multiplier with the one which is in the place to its right in the multiplicand. Do not set down this figure, however, but carry its nearest ten to the next and proceed. Place the first figures of all the lines under one another, add and mark off n decimal places. Thus, 136·4072 is multiplied by 1·30609 as follows:—

```
1364072000
    906031
----------
1364072000
 409221600
   8184432
    122766
----------
178·1600798
```

The following examples are also given in which the number of places is first given, and thereafter the multiplicand and the multiplier:—

```
 ·4471618        33·166248          3·4641016
3·7719214         1·4142136       1732·508
---------        ---------        ----------
 37719214        033166248          346410160
 8161744         63124141             8052371
---------        ---------        ----------
 15087686         3316625          346410160
  1508768         1326650          242487112
   264034           33166           10392305
     3772           13266             692820
     2263             663             173205
       38              33               2771
       30              10          ----------
---------               2          6001·58373
1·6866591        ---------
                 46·90415
```

Division of Decimals

The rule for the contracted multiplication of decimals follows from the rule for the multiplication of decimals. To divide one decimal by another, retaining only n places. Proceed as is usual in the division of decimals, only the number of figures remaining to be found in the quotient is less

than the number of figures in the divisor. Thereafter, instead of annexing a figure or cipher to the remainder, cut off a figure from the divisor and proceed with the curtailed divisor as usual, remembering, however, in multiplying this divisor to carry the nearest ten from the figures which have been struck off. Repeat this, striking off another figure from the divisor until no figures are left. The rule will be best understood from the following examples:—

·41432)673·1489(1624·71	3·1415927)2·71828180(·86525596
41432	2·51327416
258828	20500764
248592	18849556
10237	1651208
8286	1570796
1951	80412
1657	62832
294	17580
290	15708
4	1872
4	1571
0	301
	283
	18
	19

Other Scales of Notation

We are so accustomed to work with the ordinary scale of notation, which has 10 as its radix, that we are apt to forget that there is no fundamental reason why some other number should not have been adopted. 10 as the radix is undoubtedly the most convenient number from a great many points of view, but there are also occasions when another basis would make matters more convenient. Other collections besides those of 10 are continually being used in practice. Thus, the word brace is used for two as applied to game, and we are still more familiar with reckoning in dozens and grosses, where the dozen corresponds to the tens and the gross to the hundreds. To transfer a number from the ordinary scale to a scale with any other radix it is only necessary to divide the number in the ordinary scale by the radix of the proposed scale, and so find out the collections by that scale. Thus the number 430685 is decomposed into the other scales in the following way:—

Binary. 2)430685		Ternary. 3)430685		Quaternary. 4)430685	
215342	1	143561	2	107671	1
107671	0	47853	2	26917	3
53835	1	15951	0	6729	1
26917	1	5317	0	1682	1
13458	1	1772	1	420	2
6729	0	590	2	105	0
3364	1	196	2	26	1
1682	0	65	1	6	2
841	0	21	2	1	2
420	1	7	0		
210	0	2	1		
105	0				
52	1				
26	0				
13	0				
6	1				
3	0				
1	1				

Quinary. 5)430685		Senary. 6)430685		Septenary. 7)430685	
86137	0	71780	5	61526	3
17227	2	11963	2	8789	3
3445	2	1993	5	1255	4
689	0	332	1	179	2
137	4	55	2	25	4
27	2	9	1	3	4
5	2	1	3		
1	0				

Octary. 8)430685		Nonary. 9)430685		Undenary. 11)430685		Duodenary. 12)430685	
53835	5	47853	8	39153	2	35890	5
6729	3	5317	0	3559	4	2990	x
841	1	590	7	323	6	249	2
105	1	65	5	29	4	20	9
13	1	7	2	2	7	1	8
1	5						

It will be observed that the figure for ten in the duodenary scale is indicated by x.

The number 430685 will thus be as follows in the different scales:—

Binary	1101001001001011101	Octary	1511135
Ternary	210212210022	Nonary	725708
Quaternary	1221021131	Denary	430685
Quinary	102240220	Undenary	274642
Senary	13121525	Duodenary	1892x5
Septenary	3442433		

The student of arithmetic will find it a most useful exercise to work out the ordinary rules of calculation by the two methods, and to prove his

answer by transferring to the ordinary radix. Thus the ordinary radix of addition, subtraction, multiplication, and division are shown worked out by the decimal and also by the nonary scales. In working by the nonary scale it is, of course, necessary to carry the nines instead of the tens.

Addition.

Decimal Scale.	Nonary Scale.
636	776
987	1316
403	487
2026	2701

Subtraction.

1384	1807
797	1075
587	722

Multiplication.

297	360
136	161
1782	360
891	2400
297	360
40392	61360

Division.

633)79125(125	773)130476(148
633	773
1582	4217
1266	3423
3165	6846
3165	6846
0	0

Arithmetical Mean is that number which lies equally distant between two other numbers. For example, the arithmetical mean between 9 and 21 is 15. It is obtained by taking half the sum of the two numbers, thus:—

$$\frac{9+21}{2}=15.$$

Arithmetical Progression is a series of numbers increasing or diminishing by a common difference, such as 8, 11, 14, 17, 20, etc., $\frac{1}{3}$, $\frac{2}{3}$, 1, $1\frac{1}{3}$, $1\frac{2}{3}$, etc., 4, 3, 2, 1, 0, -1, -2, etc.

To find the sum of a series in arithmetical progression, the sum of the first and last terms is multiplied by half the number of terms. Taking the first example given above, the sum of the first and last terms (8 + 20) is 28.

The number of terms is 5. Multiplying 28 by $2\frac{1}{2}$, we obtain 70, which is the sum of the series. The general formula for finding the sum is

$$\frac{n}{2}\left\{2a+(n-1)\,d\right\} \text{ where}$$

n = number of terms
a = first term
d = common difference.

Arrangement, Deed of.—In England a deed of arrangement signifies an arrangement between a debtor and his creditors, whereby those creditors who may assent to it, in consideration of each other assenting, accept an assignment of the debtor's property, a stated composition or payment in full by instalments in discharge of their respective debts, either absolutely or upon stated conditions.

In Scotland the creditors at the meeting for election of the trustee in a sequestration may agree that the estate be wound up by a deed of arrangement. The terms of the deed vary, and after it is completed it is signed by the creditors and bankrupt and presented to the Court for approval.

Articles of Association.—The Articles of Association of a company registered under the Companies Acts is the document setting forth the duties, the rights, and the powers of the governing body, as between themselves and the company, the manner in which the business of the company is to be conducted, and the mode and form in which changes in the internal regulations may be made. The Articles cannot go beyond the Memorandum of Association, and they are subject always to the provisions of the Companies Acts.

Section 14 of the Companies Act 1862 provides as follows:—

"The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers of the memorandum of association deem expedient. The articles shall be expressed in separate paragraphs, numbered arithmetically. . . ."

By the above section it is imperative on companies limited by guarantee or unlimited to lodge articles, while in the case of companies limited by shares it is optional. In the latter case, if no articles have been lodged, then Table A appended to the Companies Act 1862 is held to be the articles.

Articles of Roup.—In Scotland the term roup is used as an equivalent to auction, and the articles of roup is the document in which the conditions of sale are embodied.

A/S.—Contraction for Account Sales.

Assessment is the official valuation of property or incomes for the purposes of taxation. The word is also used for the amount of the tax which has been fixed as payable by a particular individual.

Assessment Roll.—The assessment roll is the roll made up annually by rating authorities in Scotland, showing the amount of rates to be levied on each ratepayer.

The three principal rating authorities in Scotland are the Parish Councils, the County Councils, and the Town Councils. An assessment roll is made up by each.

The valuation roll is the basis of assessment (see "LOCAL TAXATION"). Parish rates, however, are levied on a reduced rental, the deductions specified in the thirty-seventh section of the Poor Law Act being taken off the gross rental to arrive at the net or assessable rental. Certain subjects appearing in the valuation roll are exempt from rates (see "LOCAL TAXATION"). Under the Agricultural Rates Act of 1896 and the Continuance Act of 1901 occupiers of lands and heritages used for agricultural or pastoral purposes only, or as market-gardens, orchards, or allotments, are assessed to parish and county rates on three-eighths of the rental; agricultural subjects should, therefore, be distinguished from non-agricultural subjects in the parish and county assessment rolls. In burghs also the assessment roll is affected by certain exceptions to the general rule of rating on the gross rental as in the valuation roll (see "LOCAL TAXATION").

Parish Assessment Roll.—The Local Government Board for Scotland recommend the following form for adoption in parishes in which there is not a certified classification for rating purposes (see Form A). The form is very complete, and has been widely adopted. Its main object is to insure accuracy, and to prevent irregularity in the imposition of the rates. The gross rental as in the valuation roll and the various steps in ascertaining the assessable rental are shown. The rates are levied *in cumulo* and afterwards apportioned. In some parishes, however, an old form of roll is still in use, in which the amount of each rate is separately set forth in the roll, a procedure involving much unnecessary labour in the collection of rates and in the audit.

A slight alteration in the form makes it applicable to "classified parishes." The occupiers' columns, instead of being divided into "agricultural" and "non-agricultural," are divided into Class I., Class II., Class III., in accordance with the classification certified by the Secretary for Scotland.

County Assessment Roll.—There is no prescribed form of county assessment roll. The following is a copy of a form in use, and is typical of the county rolls (see Form B).

Burgh Assessment Roll.—The form of roll varies to meet the requirements of the burghs. The usual columns are provided for showing the names of owners and occupiers, description and situation of property, rentals as in valuation roll, assessable rentals, rates levied on owners and on occupiers, rates received, amounts relieved, arrears, and dates of payment. Under the head of assessable rental an additional column is required for subjects let at a rent of £4 and under, the assessment on which, in terms of sec. 44 of the Burgh Police (Scotland) Act, is levied on owners only. Where there are special districts—*e.g.* water or drainage districts—the special rates are shown in separate columns, and where a water rate is levied by the burgh it is usual to show it separately also.

JOHN T. MAXWELL.

Assessor.—According to the Latin derivation and literal meaning of the word assessor, he is a person who sits side by side with others to assist and advise, and is frequently associated with judicial functionaries to assist in the argument and procedure before them, and to advise their judgments.

In Scotland the term is usually applied to a person appointed to assess

	Owners.			Occupiers.		
		d.			d.	
Poor Rate	@	2·00	per £	@	2·25	per £
Registration Rate	@	0·03	per £	@	·05	per £
School Rate	@	3·75	per £	@	4·45	per £
Special Parish Rate	@	0·22	per £	@	0·25	per £
	@		per £	@		per £
	@		per £	@		per £
In cumulo	@	6·00	per £	@	7·00	per £

SUNDAY

cumulo).

Owners. Occupiers.		No.	Date.	Paid.		Vacant.	Relieved.	Arrears.	Remarks.
Non-icultural. (13)	Total. (14)			Owners. (15)	Occupiers. (16)	(17)	(18)	(19)	
s. d.	£ s. d.			£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
..	2 5 0	1	Dec. 2	2 5 0					
12 6	2 12 6	2	Dec. 19	..	2 12 6				
..	1 18 0	3	Jan. 6	1 18 0					
..	0 16 7½	4	Dec. 19	..	0 16 7½				
..	0 12 0	5	Nov. 30	0 12 0	..	..	..	..	Poor Rate Exemption 6s.
14 3	0 14 3	6	Nov. 30	..	0 14 3	..	..	..	Poor Rate Exemption 6s. 9d.
..	..	7							
..	..	8							
6 9	8 18 4½			4 15 0	4 3 4½				

nts imposed and collected should be shown below the totals for the year, thus :—

. . . . £202 0 0 @ 6d. per £ = £5 1 0

. £28 10 0
. 126 0 0 154 10 0 @ 7d. per £ = 4 10 1½

£9 11 1½

. . . . . £4 15 0
. . . . . 4 3 4½

£8 18 4½

. . . . . 0 0 0
. . . . . 0 0 0
marks column 0 12 9

£9 11 1½

cause of uncollectable fractions of a penny, but the difference (if any) unaccounted

SMENT ROLL FOR THE YEAR

nage Rate.		Special District Rate (Lighting, Scavenging, etc.)		Total of Rates.	Paid.		Relief.		Arrears.	No.
ssessment.		Assessment.								
As Occupier. @ ₰ £.		As Owner. @ ₰ £.	As Occupier. @ ₰ £.		Date.	Amount.	Consolidated Rate.	Water and Drainage, etc. Rates.		
										1
										2
										3
										4

persons or property for the purposes of taxation. Under the Lands Valuation (Scotland) Act 1854 the Commissioners of Supply [now the County Council] of each county, and the magistrates of each burgh respectively are called upon, as occasion requires, to appoint one or more fit and proper persons to be assessors or assessor for the purposes of this Act. The duty of such assessor is annually to ascertain and assess the yearly rent or value of the several lands and heritages within the county or burgh respectively, other than the lands and heritages of railway and canal companies, which are specially provided for. He is required to make up a valuation roll annually on or before the fifteenth day of August showing the yearly rent or value for the time of the whole lands and heritages within such county or burgh respectively, and separately within each parish or part of a parish situated within such county or burgh, and specifying in each case the nature of such lands and heritages, and the names and designations of the proprietors or reputed proprietors, and, where there are tenants or occupiers, of the tenants and of the occupiers thereof respectively. He must also distinguish in the valuation roll, lands and heritages situated within the boundaries of each police burgh, each police district, each special water-supply district, and each special drainage district, also each special lighting and scavenging district. For registration of voters purposes he must also specify each dwelling-house within the meaning of the Representation of the People Act 1884, and show the name and designation of the inhabitant-occupier of each such dwelling-house.

Having made up the valuation roll in terms of the Act, it is further the duty of the assessor, on or before the 25th August, and not earlier than the 15th July in each year, to transmit to each person included in his valuation a copy of every entry in such valuation roll, wherein such person shall be set forth either as proprietor or tenant or occupier, along with a notice to such person that if he considers himself aggrieved by such valuation he may appeal against the same to the county council of the county or to the magistrates of the burgh as the case may be, or may obtain redress without the necessity of such appeal by satisfying the assessor on or before the 8th day of September that he has well-founded ground of complaint. The assessor is bound to complete the valuation roll on or before the 8th day of September in each year, and hand it over on that date to the county clerk, or the town clerk, as the case may be. He is, however, obliged to attend every court of appeal held by the valuation appeal committees of the county or burgh, and is bound to answer on oath all questions regarding the subject matter of the appeal. In order to duly perform his duties in regard to the making up of the valuation roll, the assessor is empowered to call for a written statement from any person being a proprietor or reputed proprietor, or tenant or occupier, for the county or burgh or district for which such assessor is appointed, of the yearly rent or value of all lands and heritages of which he is the proprietor or tenant or occupier; and any person failing to furnish such written statement within fourteen days, without reasonable excuse, shall be liable to pay a penalty not exceeding £20; and if any person present or cause to be presented to such assessor any false statement of such yearly rent or value, or other particulars, knowing the same to be false, he shall be liable to pay a penalty of £50.

In addition to the duties of making up the valuation roll, the assessor is also charged with the making up of the register of parliamentary, municipal, county council, and parish council voters within the county, or burgh, as the case may be, for which he is appointed.

To enable him to perform his duties under the Voters Acts, he is empowered to call for a written statement of the inhabitant-occupier of every dwelling-house, and in the event of failure to comply with such request, the person failing to furnish such written statement when requested to do so, without reasonable excuse, is liable to pay a like penalty as that enacted under the Valuation Acts for a similar offence.

Every assessor is removable at the pleasure of the county council, or the magistrates of a burgh, and before entering upon the duties of his office must make a declaration that he will faithfully and honestly perform the duties thereof.

It is not lawful for an assessor to be a sheriff clerk, or a county clerk, or a collector of poor rates, or to be employed as a factor for heritable property, or land agent, in the county or burgh for which he may be assessor.

He is disqualified, so long as he continues assessor for a county or burgh, from voting or taking part in any election of a member to serve in Parliament for the county or burgh, and from being registered as a voter in such county or burgh.

In order to the making up of the valuation rolls of lands and heritages belonging to or leased by railway and canal companies, as well as such gas, water, or other companies who desire it, a special assessor is appointed by the Crown. The remuneration or salary payable to such assessor in respect of his own time and trouble, and in respect of any clerks or other officers whom he may be allowed by the Secretary for Scotland to employ in the execution of his duties, is fixed by the Secretary for Scotland, and is payable by the railway, canal, or other companies who may appear in the roll made up by him for the year to which such salary applies, each company paying in the proportion its yearly rent or value bears to the total value appearing in the roll. He must, before entering on his duties, declare that he will faithfully and honestly perform the duties of his office, and is removable by His Majesty at pleasure.

It is the duty of the assessor of railways and canals, on or before the 15th day of March in each year, to make up a valuation roll setting forth the *cumulo* annual value of all the lands and heritages in Scotland belonging to or leased by each railway and canal company, and forming part of its undertaking, and also the proportion thereof applicable to each parish, county, and burgh through which the line of such railway or canal runs. He is also to show the lineal measurement of the entire line, and the proportion of the lineal measurement in each parish, county, or burgh. He must in addition show the cost, and the annual rent or value, of the several wharfs, docks, depôts, counting-houses and other houses and places of business situated in each parish, county, or burgh. He must also specify the same particulars within the areas of special water, drainage, lighting, and scavenging districts, and within special police districts, upon a requisition calling upon him so to do being presented to him on or before the 1st November in each year. It is further the duty of the assessor of railways and canals to transmit, on or before the 15th March in each year, to each railway and canal or other company included in his valuation, a copy of every entry in his valuation roll wherein such company shall be set forth either as proprietor, tenant, or occupier. If the company consider themselves aggrieved by such valuation they may obtain redress by satisfying the assessor on or before the 8th April that they have well-founded ground of complaint; or they may appeal, on or before the 10th day of April, to the Lord Ordinary officiating on the Bills in the Court of Session, or,

where the lands and heritages belonging to such company are all in one county, then to the Sheriff of such county.

The assessor of railways and canals is empowered to require the attendance before him of any persons as witnesses, and to examine such witnesses on oath. He may call from time to time upon any railway, canal, or other company to be included in his valuation, for detailed statements of its yearly revenue, distinguishing the different sources thereof and the amount derived from each such source, and also, in the case of railways and canals, of the cost of each of its stations, wharfs, docks, depots, counting-houses, and other houses and places of business (including the *solum* on which such stations and others are erected), and also of the parishes, counties, and burghs in which such stations and others are erected, the lineal measurement of the whole, any, each, and every part of its line, and may call for production from time to time of any books, vouchers, or other writings in the possession of any company, relating to, or bearing upon any matters aforesaid.

If any company or any of its responsible officials wilfully refuse or delay to furnish any such statements, or to make any such production when required, such company is not entitled to appeal against or object to the valuation for the year in which such refusal or delay took place.

ALEXANDER LYNCH.

Assets.—The word means, literally, *sufficient.* Originally, the use of the word was confined to property which an executor or heir could apply to the discharge of the debts and legacies due from the estate of a deceased person. These obligations could only be enforced so far as the property was available or sufficient. The application of the word was still further extended to mean property which could be applied for distribution among the creditors of an insolvent debtor, and in course of time the term has acquired the still wider meaning of any property available for the discharge of liabilities. The term as used in business now means all available property and rights which can be applied in satisfaction of liabilities, or which can be turned into money or money's worth.

In recent cases brought before the Courts, chiefly with regard to the dividends of limited companies and reductions in capital, a distinction has been drawn between what are termed "Fixed Assets," and "Circulating or Floating Assets."

Fixed Assets.—Fixed assets are those which in their nature remain fixed, and are to a certain extent permanent. Profit is made or is anticipated to be made from the mere use or holding of such assets, and not from their being manufactured or sold. Heritable property, machinery and plant, quarries and mines, are examples of "Fixed Assets."

The result of the legal decisions appears to be that in ordinary circumstances there is no obligation on a company to provide for the depreciation or replacement of such assets.

While such decisions have been given, it is, however, sound policy, and a policy which should be advocated by accountants and others having dealings in such concerns, to provide out of the income available by the holding of such assets a sum to meet all depreciation or shrinkage naturally arising from the holding or use of these assets.

"Fixed Assets" may further be subdivided into—

(1) Permanent Assets.
(2) Wasting Assets.

Heritable property is an example of a permanent asset. A building is also an example, as it remains permanent to a certain extent, but depreciates through time unless repaired to prevent depreciation.

Of wasting assets, quarries, mines, canals, railways, etc., are good examples, and although the total income derived from the working of such assets may legally be distributed in the form of dividends, every investor where this is done must look upon his dividends as made up of a return of part of his capital and the balance as revenue, because in course of time the quarry or mine, as the case may be, will be worked out, and if no fund has been reserved for providing against such a contingency, the capital sunk cannot be returned.

Floating Assets.—Where assets are held for the purpose of being sold or realised, then these assets are termed "Floating Assets." Examples of "Floating Assets" are stock-in-trade, raw material, and customers' accounts.

Depreciation or loss in value of such assets must be provided for before the income derived from their use can be ascertained, that is, such assets for balance sheet purposes must be taken at their real value, as distinguished from the "cost value" which may be taken in the case of "Fixed Assets."

Economists have always drawn a distinction between fixed and circulating capital, and this distinction applies to assets, as the assets form the capital. Thus Adam Smith drew a distinction between capital which earned a profit to the owner of such capital while the owner remained in possession of such capital, and capital which did not.

John Stuart Mill makes the distinction as follows:—

"Capital which fulfils the whole of its office, in the production in which it is engaged, by a single use, is called circulating capital. Capital which exists in any durable shape, and the return to which is spread over a period of corresponding duration, is called fixed capital."

The distinction already given between fixed and circulating assets corresponds closely to the distinction recognised by these economists. For example, compare the money spent on constructing a canal with money spent on purchasing goods to be resold.

In the former case a profit would be made by the use of the canal while the owner remained in possession, while the profit derived in the second case would be made, and could only be made, by the goods being sold and possession given up.

Legal and Equitable Assets.

There is a classification of assets into legal and equitable assets.

Legal Assets are those which creditors may make forthcoming for payment of debts in a Court of Law. Legal assets comprise everything coming to an executor as such by virtue of his office.

Equitable Assets are those which creditors can make forthcoming only in a Court of Equity. "Equitable Assets" are divided *pari passu* among all creditors, and an executor or administrator has no right of retainer out of "Equitable Assets."

Marshalling Assets is the term applied to the arranging of the debts of a deceased person so as to give effect to their priority.

Assignation.—As a term of Scots conveyancing, "Assignation" applies to a written transfer of moveable and non-feudal property, just as

"Disposition" applies to a transfer of heritage which has been perfected by sasine or its equivalent. The granter of an assignation is usually termed the "cedent," and the receiver the "assignee."

In regard to corporeal moveables (*i.e.* "goods"), possession presumes property, and therefore delivery by the owner to another person with intention to convey the property is a sufficient transference without writing. An assignation is only resorted to in special circumstances, as where a *universitas* is conveyed, or a trust is created, or the goods are in the hands of a third person, or are given in security. It must be observed that goods in the possession of the owner are not transferred by a delivered assignation without delivery of the goods themselves, and that such a deed is not available in a question with the cedent's creditors, or with a subsequent assignee who has obtained possession. Where goods are in the hands of a third person, an assignation, with notice to the holder of the goods, is an effective transfer, the custodier after the date of the notice holding on behalf of the transferee (2 Bell's *Com.* 12). Incorporeal rights, including debts, require for their transfer writing in the form of an assignation, but the mere delivery of a writing does not of itself complete the transfer, or vest the assignee without intimation to the debtor or holder of the right conveyed. Certain descriptions of moveable property and rights are by statute conveyed, or the transference completed, in a special manner. Thus, ships are assigned by means of statutory forms, applicable respectively to sale and mortgage, and in order to complete the title the assignation must further be registered in the Shipping Register (57 & 58 Vict. c. 60, secs. 24, 31). Assignments of patents, registered designs, and registered trade-marks require registration in the appropriate register of patents, designs, or trade-marks, as the case may be (46 & 47 Vict. c. 57, sec. 87). Certain other documentary rights are capable of transmission by mere indorsation and delivery without intimation, *e.g.* bills and promissory notes (45 & 46 Vict. c. 61, sec. 31), bills of lading (18 & 19 Vict. c. 111), delivery orders and other documents of title (52 & 53 Vict. c. 45, sec. 1 (4), 11). In addition to moveable rights, assignation is also the proper form of transfer of heritable rights where sasine or its equivalent has not been expede or is unnecessary, as in the case of unrecorded conveyances of land, or in the case of servitudes, reversions, patronages, etc. It is also appropriate to leases, but, in order to be valid against singular successors, the assignation must be followed by possession, or, in the case of a long lease, by registration under the Registration of Leases (Scotland) Act, 1857 (20 & 21 Vict. c. 26).

Formerly the law of Scotland, in common with that of England, did not allow debts to be assigned without the consent of the debtor, but in both countries indirect methods were soon devised for accomplishing a purpose so obviously necessary to commerce. In Scotland, the assignee was usually constituted the mandatory or procurator of the cedent, and as in this case the mandatory acted for himself and not for his nominal principal, he was known in the language of the law as "procurator *in rem suam*" (Bell's *Com.* ii. 15). Under this theory the assignee in Scotland was at common law entitled to sue in his own name, a privilege which was long denied in England, but is now by statute partially if not completely admitted (36 & 37 Vict. c. 66, sec. 25 (6)).

A form of assignation is appended to the Transmission of Moveable Property Act 1862 (25 & 26 Vict. c. 85). It is applicable to bonds, decrees, policies of assurance, protests of bills, and all kinds of assignations already in existence, but it cannot be used in the transmission of moveable

estate to which the owner has not already a conveyance or assignation or document of title. A long lease may be assigned in the form appended to the Registration of Leases (Scotland) Act 1857, Sch. A. General forms applicable to different circumstances will be found in the style-books (*e.g. Scots Style Book*, vol. i. pp. 424 *et seq.*; *Juridical Styles*, vol. ii. pp. 670 *et seq.*; Burns' *Conveyancing Practice*, pp. 12, 421, 541, etc.), but effect will be given to any form of words which, if fairly carried out, will operate a transference (*Carter* v. *M'Intosh*, 1862, 24 D. 925). Even the words "Pay the above account to" a person named have been held equivalent to a procuratory *in rem suam* when written on the account itself across a penny adhesive stamp (*Ritchie* v. *M'Lachlan*, 1870, 8 M. 815). While the last-named result is well established, opinions vary as to the principle on which it proceeds. In *Ritchie's* case (*ubi sup.*) the docquet was viewed either as a bill payable on demand which operated an assignation and was sufficiently stamped, or (preferably) as a mandate or procuratory *in rem suam*, which required no stamp, and having been recognised by the common debtor effected a transference which defeated a subsequent arrestment. Neither of these views is satisfactory. The account was subject to taxation, and, not being "a sum certain in money," was not a bill (45 & 46 Vict. c. 61, sec. 3), and earlier authorities seem to establish that a mandate *in rem suam* is an assignation which is completed by intimation to the debtor without requiring recognition by him. On the latter supposition only inveterate practice can justify the stamp of a penny, but the revenue authorities appear to be satisfied. (See Bell's *Prin.* 10th ed. sec. 1461, Guthrie's note (*f*); *Smith* v. *Paterson*, 1894, 10 Sh. Ct. Rep. 171, and authorities there cited.)

Where intimation is necessary to complete the transfer, it may take the form provided by the Transmission of Moveable Property Act 1862, or any other form which preserves clear evidence of notice having been given. A charge upon a bond at the instance of the assignee, or citation of the common debtor in an action for payment, operates judicial intimation. A heritable bond duly registered in the Register of Sasines has been held sufficient intimation of a conveyance of the *jus crediti* or personal right in the lands in which the granter was not feudally vested (*Paul* v. *Boyd's Trustees*, 1835, 13 S. 818. See also *Edmond* v. *Magistrates of Aberdeen*, 1855, 18 D. 47, affd. 3 Macq. 116). But while registration in the Register of Sasines has the effect mentioned, this does not apply to registration for preservation in the Books of Council and Session (*Tod's Trustees* v. *Wilson*, 1869, 7 M. 1100). Equivalents to intimation are admitted, among which may be classed any act of the debtor undertaking to pay to the assignee, or corroborating the debt in the person of the assignee, but mere private knowledge on the part of the debtor will not suffice (*Ersk.* ii. 1. 28; Bell's *Com.* ii. 17). Where the trustee of a fund assigned is himself a party to the deed, no intimation is required (*Miller* v. *Learmonth*, H.L. 1870, 42 Sc. Jur. 418).

The Bankruptcy Act 1856 (19 & 20 Vict. c. 79) transfers to, and vests in, the trustee as at the date of the sequestration, *inter alia*, "the moveable estate and effects of the bankrupt wherever situated so far as attachable for debt, to the same effect as if actual delivery or possession had been obtained, or intimation made at that date, subject always to such preferable securities as existed at the date of the sequestration, and are not null or reducible (sec. 102). The term "assignation" is not expressed, but is implied in the word "intimation." The trustee is accordingly to be preferred to the assignee under an assignation prior in date, but not inti-

mated (*Tod's Trustees* v. *Wilson*, 1869, 11 M. 1100). The trustee takes the subject of the assignation *tantum et tale*, as it stood in the person of the bankrupt, and therefore his right does not affect other rights which, though vested in the bankrupt, were not his actual property at the date of the sequestration (*Gordon* v. *Cheyne*, 2 S. 675). In other words, the maxim *assignatus utitur jure auctoris* is applicable to such cases (Bell's *Com.* i. 304; *Graeme's Trustee* v. *Giersberg*, 1888, 15 R. 691).

In sequestration law it may be noted that an assignee acquiring, after the date of the sequestration, a debt due by the bankrupt, cannot vote in the election of a trustee or commissioner, but his rights are reserved in all other respects (B.A. 1856, sec. 64). If the cedent has already lodged a claim the assignee does not require to lodge a new claim, but merely intimates the assignation to the trustee (*Walker* v. *Walker*, 1835, 13 S. 428). A bankrupt cannot be called upon to assign a *spes successionis* on the demand of his trustee in bankruptcy (*Reid* v. *Morrison*, 1893, 20 R. 510), but creditors have a right to challenge a gratuitous alienation of such a *spes* (*Obers* v. *Paton's Trustees*, 1897, 24 R. 719).

A decree of cessio operates as an assignation of the debtor's moveable estate in favour of the trustee (43 & 44 Vict. c. 34, sec. 9), and though not expressly so stated in the statute, the effect is that of an intimated assignation as at the date of the decree, irrespective of the date of extract (*Gray* v. *Gray's Trustee*, 1895, 22 R. 326).

The trustee under a trust deed for creditors receives no statutory assistance, and is therefore subject to the ordinary common-law rules. It has been argued that a voluntary trustee for creditors is not an assignee but a manager for the insolvent truster. Thus where a lease excluded assignees legal or conventional Lord Young was of opinion that a trustee for the creditors of the lessee was not an assignee so as to involve forfeiture of the lease, but a contrary opinion was expressed in the same case by Lord Rutherfurd Clark and the point did not affect the judgment (*Dewar* v. *Ainslie*, 1892, 20 R. 203). If the principle of mandate were to rule in a trust for creditors, intimation would not be necessary to complete the transfer, but it is well established that the trustee holds the estate, not as mandatory for the truster, but for behoof of the creditors. "He is *their* trustee, holds the estate for them, and sustains the formal title under which they have the radical *jus crediti*" (Bell's *Com.* ii. 383; *Globe Insurance Co.* v. *M'Kenzie*, 1849, 11 D. 618, affd. 1850, 7 Bell, 296; *Cruickshank* v. *Thomas*, 1893, 21 R. 257).

The position of a liquidator of a joint-stock company must be distinguished from that of a trustee in bankruptcy or insolvency. The liquidator is an agent or mandatory for the company, acting under special statutory powers, and having statutory duties. Hence no assignation is required, and no vesting takes place. The liquidator is merely an agent for the company or for the Court, and does not represent creditors (*Waterhouse* v. *Jamieson*, 1870, 8 M. (H.L.) 88 *per* Lords Chelmsford and Westbury at p. 98. See also *Gray's Trustees* v. *Benhar Coal Co.*, 1881, 9 R. 225, *per* Lord Shand at p. 231; *Clark* v. *West Calder Oil Co.*, 1882, 9 R. 1017, *per* Lord President Inglis at p. 1025). This principle, however, is sometimes lost sight of, *e.g.* in the Titles to Land Act 1868, (31 & 32 Vict. c. 101), which makes provision (sec. 25) for vesting the liquidator of a joint-stock company in lands and heritable securities in the manner applicable to the trustee in a sequestration.

Where the law of a foreign country differs from that of Scotland in regard to the requisites necessary to transfer a right or claim, it may be

said generally that the *lex loci contractus* will prevail. Thus, where a loan given in England upon the deposit, without written assignation, of a Scottish policy of life insurance, the English lender, after intimation to the insurance company, was in Scotland preferred to the trustee in bankruptcy on the estate of the deceased borrower (*Scottish Provident Institution* v. *Cohen & Co.*, 1888, 16 R. 112). RICHARD BROWN.

Assignee.—One to whom a right or property is transferred. The official assignee on the London Stock Exchange winds up the estate of a bankrupt member.

Assignment.—The transfer of a right or property. The term is not very often applied to the transfer of freehold property, but is limited to personal property.

Assignment, Deed of.—The instrument by which a right or property is assigned. The name is specially applied to the deed by which a debtor's property is assigned or conveyed to a trustee for behoof of his creditors. Such an assignment is considered an act of bankruptcy (Bankruptcy Act 1883, par. 4 (*a*)).

Assignor.—One who transfers or conveys a right or property.

Assumption, Deed of.—The Scotch law term for the deed under which new trustees are appointed.

Assurance. *See* INSURANCE.

At the rate of.—In a dividend warrant, when such a phrase as "a dividend *at the rate* of 5 per cent" appears, it means that only a proportion is paid for the period for which the dividend is declared. If it is for a half year £2 : 10s. would be paid. The words "at the rate of" are used to distinguish it from a dividend such as "a dividend at 5 per cent for the half year," which would mean £5 would be paid, and therefore the dividend per annum would be 10 per cent.

Attachment.—The legal seizure of a debtor's property.

Attestation.—The legal verification of a document by the signature of a witness or witnesses who were present at the time of its execution.

Attorney, Power of.—A deed authorising an agent or factor to act for his principal.

Auction and Auctioneer.—*Definitions.*—An auction implies the offering for sale to the highest bidder in some place of public resort property, real or personal, in the widest sense of the term, including such personal rights of a limited nature as those of a lessee and an annuitant. The person who conducts an auction is called an auctioneer. An upset price may be reserved for the property or interest sold, which price must be reached before a bid will be accepted, or the sale may be without reservation of any limit to the amount of the bids that will be allowed. In this country the usual practice is to start with a low figure, leaving the increase thereof to mutual competition, but in the case of what is called a Dutch auction a start is made with a high figure, and the property knocked

down to the first person who bids. In Scotland the term roup is not uncommonly employed as equivalent to auction.

The virtue of a sale by auction is that it generally realises the fair market price or value. Personal interference and fraud being excluded, it constitutes the most appropriate method of sale for vendors who occupy a fiduciary position. Accountants frequently have recourse to it when acting in the capacity of mortgagees, trustees, executors, receivers, or arbitrators. By statute it has been made in many cases compulsory to sell by auction, *e.g.* (1) where the goods of a debtor are sold by the sheriff under an execution for a sum exceeding £20 (including costs) (Bankruptcy Act 1883, sec. 145; cp. Bankruptcy Act 1890, sec. 12); (2) where personal property is ordered by a county court judge or the registrar to be sold by the high bailiff (County Court Rules 1889, O. 23, rs. 12, 13); (3) where a distress is levied by a constable under a warrant of a court of summary jurisdiction (Summary Jurisdiction Act 1879, sec. 43; cp. Law of Distress Amendment Act 1888, sec. 5); (4) where an unredeemed pledge pawned for above 10s. and not more than £10 is sold by the pawnbroker (Pawnbrokers Act 1872, sec. 19, schedule 5); (5) where property left in inns is sold (Innkeepers Act 1878, sec. 1); and in cases within secs. 167 and 497 of the Merchant Shipping Act 1894.

Qualifications of Auctioneer.—Any one who either (1) carries on the business of an auctioneer; or (2) acts in that capacity; or (3) offers for sale or sells at an auction goods, chattels, lands, tenements, or hereditaments, or any interest therein; or (4) indicates on his premises that he carries on the business of an auctioneer, must take out the auctioneer's licence at an annual duty of £10, expiring on July 5 of each year, either at Somerset House or at the office of the surveyor of taxes for the applicant's district (see 8 & 9 Vict. (1845) c. 15, sec. 4; and 6 Geo. IV. (1825) c. 81). Where two or more auctioneers carry on business in partnership, each must have a licence. The penalty for acting without a licence is in the three first-mentioned cases £100, and in the fourth-mentioned case, £20. Refusal to produce the licence when required by an officer of excise may be visited with a penalty of £20; and if, on the demand of such officer, or of any officer of stamps and taxes, an auctioneer does not at a sale by auction produce his licence, or immediately deposit the sum of £10, he may be arrested, and sentenced by the magistrates to a month's imprisonment (see 6 Geo. IV. (1825) c. 81, sec. 28, and 8 & 9 Vict. (1845) c. 15, sec. 8).

No licence is required—(1) for the letting by auction of land or any interest therein; (2) for a sale under a distress for nonpayment of rent or tithes not exceeding £20; (3) for a sale under the order of the Chancery Division of the High Court of Justice; (4) for a sale by a bailiff under process of a county court; (5) for a sale under 6 Geo. IV. (1825) c. 48, or 7 Will. IV. and 1 Vict. (1837) c. 41, providing for the recovery of small debts in Scotland; (6) for a sale by a bailiff of goods taken in execution under a civil bill decree in Ireland; (7) for a sale of fish on the seashore where landed; (8) for a sale of mineral ore by ticket; and (9) for sales by officers of ordnance under proper authority: by officers of the Admiralty of public stores; by officers of the Inland Revenue and of Customs of seizures made; by non-commissioned officers and soldiers properly authorised of the effects of deserters or of officers or soldiers dying in H.M.'s service; and by receivers and deputy-receivers of wrecks appointed under the Merchant Shipping Act of property for the benefit of the Crown.

Sales made by an auctioneer not duly licensed will not be affected, but

it is doubtful whether an auctioneer so circumstanced may recover his commission, though his out-of-pocket expenses can probably be claimed.

There is no restriction as to the place where the business of an auctioneer may be carried on. But commodities which are required to be sold under excise licences cannot be sold on unlicensed premises except with the consent of a collector or supervisor, obtained on application a week before the intended sale. Again, auctioneers are entitled without payment of further duty to act as appraisers and valuers, and without further licence to carry on business as house and estate agents.

Instructions to Sell.—These may be written or verbal, or implied from the circumstances. Writing is always to be preferred. If a general authority is given it will be liberally construed from considerations of the usual course of dealing in similar cases. Particular instructions should be closely followed. Any objection to an auctioneer's conduct should be taken within a reasonable time after discovery of it, otherwise the vendor will be bound by what has been done. The auctioneer's authority to act may be revoked at any time before a sale takes place, and revocation will be implied on the death, lunacy, or bankruptcy of the principal. Any subsequent interference on the auctioneer's part with the property of the vendor may render him liable for conversion.

When instructions are received from a customer, an auctioneer should, as a matter of business prudence, ascertain as far as may be practicable or judicious that such customer is legally entitled to sell. He should be specially cautious where there is any suspicion of disability. He should also, in the case of chattels, personally inquire whether they are affected by a bill of sale. As a rule, only a reasonable inquiry is necessary, for in cases of doubt an auctioneer will usually protect himself by demanding from his customer a satisfactory indemnity prior to selling. Should he neglect these precautions he may, if he sells, however innocently, goods on behalf of one who turns out to be not the true owner, find himself held liable to the true owner for damages for conversion. If, however, an auctioneer or broker merely brings together a vendor and a purchaser for a commission, he will not be liable, in the absence of negligence on his part, should the title unknown to him, turn out to be defective.

Property in the Hands of an Auctioneer.—An auctioneer is required, with respect to property entrusted to his possession for sale, to take such care as an ordinarily prudent man would take of his own property, and not merely the care which he usually takes in his own private affairs, but he incurs no liability for losses by unavoidable accident. How long this liability will endure must depend upon the agreement under which he is employed, or upon circumstances. It may continue even after a sale, and may be incurred not only to the vendor but also to a purchaser, though, as a rule, it is made an express condition that each lot of goods is to be at the purchaser's risk from the fall of the hammer, or some specified later time.

Whilst in an auctioneer's hands in the ordinary way of business, goods cannot be seized under a distress for rent due by him. On the other hand, he has sufficient interest over and above the mere possession to maintain an action against a stranger who removes from his possession goods in his care, and to prosecute the thief of such goods. Further, he has a lien upon such goods, as well as on any deposit or purchase money received by him for his remuneration or other indemnity lawfully due to him.

Advertisements and Catalogues.—Instructions having been received, it is the duty of the auctioneer to advertise the sale in such manner as may

be reasonable in the circumstances, and to prepare particulars and catalogues. Advertisements may be in the newspaper press, or by posters or handbills. In framing these and other particulars the auctioneer must avoid inaccuracy as to material and specific facts, and the giving of any warranty not expressly authorised by the vendor. In order not to incur personal liability to a purchaser, he should (1) disclose the name of the vendor, and (2) refrain from expressions indicating a personal undertaking on his part. All notices framed should be accurate and adequate, and intelligible to the class of purchasers likely to be interested.

Particulars are usual in the case of lands or houses; catalogues in the case of chattels personal. A sale of land being a contract *uberrimae fidei*, in such a case all material facts should be disclosed, including the name and description of the party who engages to be liable to a purchaser. In the case of personal chattels the maxim is *caveat emptor*, and it is sufficient not to make misleading statements. In the former case legal assistance is advisable, for the particulars will form part of the contract between vendor and purchaser. Puffing and commendation are unobjectionable if kept within proper limits. It should be stated, however, whether the sale is to be subject to a reserved price or without reserve, or with liberty to the vendor to bid. An auctioneer exceeding his instructions in the preparation of particulars or catalogues will be liable to his principal in damages.

The conditions of sale are written or printed in important cases; otherwise they must be implied from the circumstances and mercantile usage. In the case of chattels the conditions may be prepared by the auctioneer. They should specify whether the sale is with or without reserve; with or without liberty to the vendor to bid; the minimum advances in bids permissible; how disputes are to be settled; what deposit shall be paid, and in what circumstances it will be forfeited; a power, if necessary, to resell the lots; and the manner in which the lots shall be delivered and the balance of the purchase money paid; also at whose risk the lots shall be prior to delivery. To fix purchasers with notice of the conditions, these should either be circulated before the commencement of the sale, or be posted in a conspicuous place on the premises. In the case of land and house property, in addition to conditions such as those just mentioned, the nature of the title and any burdens with which a purchaser will be saddled should be set out. Where conditions have been published, verbal modifications by the auctioneer at the sale will not as a rule have any effect.

Should property be withdrawn from sale after the publication of advertisements and catalogues, notice of the withdrawal should be published as early as possible in like manner as were the advertisements and catalogues.

The Sale.—An auction may be held either at an auction mart or public saleroom, or on the auctioneer's premises, or on premises temporarily engaged, or where the property may happen to be. All that is necessary is permission to use the place for the purpose. Sales by auction may be made any day of the week except Sunday.

The auctioneer ought in person to perform all essential acts in the sale, though the assistance of clerks and other subordinates may be had for matters of detail, *e.g.* even to use the hammer and make the outcry. His authority under his licence, too, cannot be delegated.

In certain cases the following statutes are important, namely:—The Markets and Fairs (Weighing of Cattle) Acts 1887 and 1891; The Pawnbrokers Act 1872; The Sale of Food and Drugs Acts 1875 and 1879; and The Merchandise Marks Acts 1887.

Sales may be made either in the principal's name or in the auctioneer's name. If the latter method is adopted, the auctioneer incurs personal contractual liability to the purchaser. The ordinary rules of Agency (*q.v.*) apply, wherefore, unless purchasers have notice of limits set to an auctioneer's authority, the principal is bound to the extent recognised in similar circumstances by commercial usage. An auctioneer is agent of the vendor alone, except that when property is knocked down to the highest bidder he may, on behalf of the latter, affix his name to a memorandum, so as to complete the bargain in cases where by law that is required to be in writing.

To the public who resort to an auction the auctioneer incurs liability if he fraudulently withdraws property from an advertised sale, or if he acts in collusion with members of that public, or if he receives puffing or pretended bids, or, generally speaking, if he is guilty of intentional misrepresentation or fraud. He will fail in his duty if he bids on behalf of the principal or on his own account, or if he knowingly allows another person to bid either for the principal or for himself. Again, he incurs liability to the principal if he fails to follow special instructions, if he accepts commissions or gratuities from purchasers, and, generally speaking, if he is guilty of any negligence in the performance of his duties as auctioneer. So if goods entrusted to an auctioneer for sale sustain injury through the want of that care which is expected of an ordinarily prudent man, he is liable in damages. He is liable to the vendor also if he neglect to make a bargain binding in law on the purchaser, or if he allows a bargain to be made below the reserved price, or even below the best price fairly obtainable. He should, moreover, take reasonable care as to the sufficiency of the persons to whom he knocks down property.

A bid made is an offer, and as such may be withdrawn at any time before acceptance signified by the fall of the hammer or other customary act (Sale of Goods Act 1893, sec. 58 (2)). The moment a sale is made, the auctioneer is *functus officio* so far as that contract is concerned, and cannot, therefore, thereafter vary or rescind it without the authorisation of the principal. Nor has an auctioneer power to sell, without the authorisation of his principal, by private contract where an auction proves unsuccessful. For the proceeds of sales received by him, and for property unsold remaining in his hands, an auctioneer is liable to account to his principal. Should property sold turn out to have been stolen, the purchaser's title will be defective unless the sale was in market overt.

It is usual in conditions of sale to reserve a right to resell on a purchaser making default, charging the purchaser with any resulting deficiency (Sale of Goods Act 1893, sec. 48 (3)). In other cases a vendor should resell only after notice. When lots sold are delivered to purchasers, the auctioneer should make it his duty to see that the price is paid in the ordinary course of business, either to himself or to his principal, as settled by the conditions. Payment should be in cash, but sometimes to receive payment by cheque will not be negligence.

With reference to the deposit, this is not merely an earnest or pledge of the bargain, but a part payment of the purchase money. A purchaser cannot, therefore, get out of his bargain by forfeiting the deposit. While the deposit is in the auctioneer's hands he is like a stakeholder in respect thereof, and ought to retain it until the completion of the sale. Otherwise, should the bargain be reduced as against the vendor, he may be called upon to repay it. No interest will accrue upon the deposit while in his hands, except where the bargain becomes nullified through the vendor's fault, in

which event the purchaser can recover both deposit and legal interest thereon. Should conflicting claims to a deposit in the auctioneer's hands arise between vendor and purchaser, the auctioneer may obtain a judicial decision as to who is entitled by taking out an interpleader summons.

Remuneration of an Auctioneer.—This, according to the usual practice, consists of a commission, the amount of which is regulated either by express agreement with his principal, or by mercantile usage of which his principal was aware, or by statute or orders of court. The chief provisions under the last-mentioned head are contained in the Distress for Rent Rules 1888, the Table of Fees in the Schedule to an Order of 31st August 1888 as to fees to be received by a sheriff in respect of the execution of writs of fi. fa., the County Courts Act 1888, sec. 154, and the Bankruptcy Rules 1883 and 1890. The commission will in general be earned when any bargain is concluded directly traceable to the auctioneer's act, though in fact subsequent to the auction sale. Immaterial acts, however, do not count, and by agreement the auctioneer's right may be limited to specified results. No commission will be payable if the auctioneer has been guilty of negligence or want of skill, or if the principal has reaped no benefit by his employment. A *quantum meruit*, however, will in general be due for any benefit actually accruing to the principal. The auctioneer has a lien for his commission on goods and monies of his principal in his hands.

JOHN R. M'ILRAITH.

Auctioneers' Accounts.

NATURE OF TRANSACTIONS . .	157	INSURANCE AGENCY WORK . .	162
CASH ACCOUNTS	158	OUTSTANDING CHARGES . .	162
AUCTION SALES ACCOUNTS . .	159	OUTSTANDING DISBURSEMENTS .	162
COLLECTION OF RENTS . . .	161		

ONE of the most distinctive features in connection with the accounts of auctioneers is that the fees earned by them are to a large extent dependent, less upon the work that is actually done by them than upon the success that attends their endeavours. While a solicitor's bill of costs is based upon each item of work done by him, and while an accountant's charges are (in general) based upon the amount of time occupied upon the business, an auctioneer is, as a rule, not entitled to any remuneration, save for work successfully accomplished. This introduces a somewhat distinctive feature into auctioneers' accounts. The basis of the charges being, not the work done, but the successes achieved, it becomes important that very careful entry should be made of each individual success upon which a charge may be based.

The work ordinarily undertaken by auctioneers consists not merely of the selling of property by auction, but also the letting of properties, the collection of rents, the sale of properties by private treaty, the making of inventories and valuations, and the transaction of insurance agency business. In the absence of any special arrangement to the contrary, it is only in connection with inventories and valuations that the auctioneer is entitled to make a charge unless his efforts are attended by success. Hence it follows that, however important it may be for the general conduct of an auctioneer's business to keep full records of all work done and all negotiations in progress, these records cannot be used as the basis of the financial accounts.

It is necessary that a separate book, or separate books, should be set aside

for the initial record of all business done or successes achieved, which form, or will in the future form, the basis of a charge against the client. In many cases it is not possible to at once determine the exact amount of such charge, but none the less should the entry be made at the earliest possible moment, with a view to avoiding any possible risk of its being eventually overlooked. The most convenient plan to adopt is to employ a waste-book, or rough journal, for such initial records. No special form of ruling is necessary, but the particulars relating to the matter should be recorded with as much detail as may seem necessary, the amount of the charge being inserted if ascertained, or if unknown, being left blank until such time as it can be definitely determined. This waste-book should be treated, not as a book of account but as a statistical book, and the entries contained therein should be marked off as they are recorded in the financial books. The most convenient way of so marking them off is by reference to the folio in the book of account where the entry first appears, made boldly in blue pencil over the original entry in the waste-book. A casual inspection of the waste-book will then show that those entries which are not so marked have still to be dealt with in the books of account.[1]

Those auctioneers who undertake periodical sales of property for miscellaneous vendors, and those who make a speciality of rent-collecting, will require to keep somewhat special books for the record of these transactions, but in other respects the financial books of auctioneers may be upon comparatively simple lines, the only books required being cash-book, petty cash-book, journal, and ledgers.

With regard to the cash-book, it is important to bear in mind that monies received by auctioneers in payment of goods sold by them (or on account of such payments) are received in trust for the vendor. Such monies should therefore be kept quite separate from the auctioneer's own monies. As, however, such separation would to some extent complicate the book-keeping, it is thought that in general it will be found best to employ two banking accounts, thus making the additional accounting fall upon the banker's rather than upon the auctioneer's own staff. If all monies received on account of clients be paid into a clients' banking account, and all payments made to clients on account thereof be made by cheque drawn upon this account, the auctioneer takes ample precautions against unwittingly employing trust funds for his own private purposes, and when the books are balanced from time to time the exact amount then due to clients can be readily ascertained, and the balance of the special banking account reduced to that sum by a cheque drawn in favour of the auctioneer and paid into his own account. If this plan be adopted no modification of the books becomes necessary, the bank balance, as shown by the cash-book, being reconciled with the aggregate balance of the two banking accounts, instead of with one pass-book as is usual. Those, however, who prefer to keep their accounts upon more accurate and scientific lines may achieve this purpose by employing a double-column cash-book, the entries in one pair of columns relating to the auctioneer's own banking account, and those in the other pair of columns to the clients' banking account. By this means the cash-book will show separately the balance on each bank account.

In the case of most practitioners it is also convenient to add a further column upon each side of the cash-book to record allowances made to clients upon payment of their accounts, and discounts deducted from creditors or commission deducted from clients upon the payment of accounts due to

[1] In practice it will often be found convenient to subdivide the waste-book, so that the initial memoranda may be classified into departments according to their nature.

them. The introduction of these additional columns will in most cases be found to materially reduce the number of journal entries that may be required.

The necessary records in connection with miscellaneous sales of property may be most conveniently made by an adaptation of the "tabular" system of book-keeping. A "marked catalogue" of each sale should be bound up in a permanent manner, and money columns added so as to show, not merely the price for which each lot was sold, but also the amount received from the purchaser in payment thereof. This marked catalogue thus becomes a ledger, accounting in detail for all the lots sold at that particular sale as between the auctioneer and the various purchasers. A subsidiary cash-book should be employed for each sale, from which the amounts received from the various purchasers may be posted up into the marked catalogue, the total only appearing in the general cash-book after the money has been agreed and paid into the clients' banking account. Another "marked catalogue" should be employed to record, in a similar manner, the transactions between the auctioneer and the various vendors. Money columns should be provided in this to record not merely the price realised for each lot, but also the commission deducted by the auctioneer, and the net amount paid by him to each vendor. A subsidiary cash-book will record these payments in detail and form the medium from which the postings are made into the vendors' marked catalogue, while it is only necessary for the total to be recorded in the general cash-book. When all outstandings have been adjusted, the difference between the amount received in respect of each sale and the amount paid out to vendors in respect thereof will be the commission charged by the auctioneer for his services, the total of which may be verified by adding the commission column in the vendors' marked catalogue. The accounts of each sale may be balanced as it is concluded by a cheque for the amount of the total of such commissions being drawn on the clients' bank and paid into the auctioneer's own bank, or the transfer may be delayed until balancing time. In either event, however, an additional journal entry should be made, debiting the sale account in the clients' ledger, and crediting commissions account in the private ledger with the total commissions earned upon that sale, so that the accounts in respect of each sale may be closed as soon as may be after it has been concluded.

Upon the next page are given specimen forms of the three marked catalogues that will be found convenient in use. Form "A" is the marked catalogue that will be before the auctioneer at the time of selling. It is purely a statistical book, forming no part of the regular system of book-keeping, its sole object being to enable the auctioneer to record the amounts realised for each lot and the name of the purchaser, while supplying him with information as to the reserve price (if any) and the name of the vendor. This last item of information is especially useful when it appears desirable to offer two or more lots for sale together; of course this cannot be done unless they are the property of the same vendor. The auctioneer's marked catalogue may be conveniently compiled by interleaving the ordinary printed catalogue with pages ruled similar to the right-hand portion of the form. Of course, when so prepared the additional information will appear alternately upon the left-hand and the right-hand page of the opening; this, however, will be found to cause no inconvenience in practice.

FORM "A"

	Lot No.	Vendor's Name.	Reserve Price.	Sold for	Purchaser's Name.
			£ s. d.	£ s. d.	
(This side is occupied by a page of the ordinary printed catalogue of sale.)					

FORM "B"

	Lot No.	Purchaser's Name.	Sold for	Fol.	Cash Received.
			£ s. d.		£ s. d.
(This side is occupied by a page of the ordinary printed catalogue of sale.)					

FORM "C"

	Lot No.	Sold for	Commission.	Fol.	Cash Paid.	Vendor's Signature.
		£ s. d.	£ s. d.		£ s. d.	
(This side is occupied by a page of the ordinary printed catalogue of sale.)						

The marked catalogues shown in forms "B" and "C" may also be compiled in the same manner, if thought desirable. As, however, they are both books of account, and as, moreover, it will be generally found convenient to

have a somewhat larger space between the lines than is usual in a printed catalogue, it will generally be found best for these books to be made up with the left-hand page blank, and for the corresponding page of the printed catalogue of sale to be neatly pasted thereon. If this plan be adopted, it is probable that the lines upon the right-hand page will not coincide with the lines on the printed catalogue; but as a column is provided on the right-hand for the repetition of the lot number, this is of no consequence. Form "B" is kept by the auctioneer's clerk during the sale. He records the purchaser's name and the price realised for each lot, and a comparison between this record and the record kept by the auctioneer in his own catalogue will enable any discrepancy that may arise to be readily settled. In the clerk's marked catalogue additional columns are provided to record the amounts received from the purchaser in payment of the lots he has bought, together with a column referring to the number of the receipt which has been given to him, and which forms the authority to the head porter to allow the purchaser to clear the lots. When all lots have been cleared, the addition of the two money columns should of course agree.

Form "C," which is kept upon similar lines to form "B," records the accounts between the auctioneer and the various vendors. The first money column records the price for which each of the various lots was sold, and is filled up from form "B." The auctioneer's commission on selling is calculated and inserted in the next column, the difference between the two being the amount payable to the vendor, which is entered in the third money column when paid, a reference to the cash-book being inserted in the folio column at the same time. In many cases it will be found convenient to add a further column for the vendor's signature in acknowledgment of the money paid over to him (as shown in form "C"), but sometimes it is thought best for the acknowledgment to be given in the cash-book.

When a special sale is held at which only a few lots are offered, as is frequently the case when house property or land is offered for sale, there is, of course, no necessity for any special accounts to be kept, such as those just described. The various items may be conveniently passed through the general cash-book in detail, and the commission payable to the vendors debited to them through the agency of the journal.

With regard to the collection of rents, when a considerable number of rents are collected on behalf of one client it will be found advantageous to devote separate books to the record of all transactions relating to such separate estate, and to open a special banking account in connection therewith. This plan has the advantages of simplicity and convenience. The records may then be conveniently kept in precisely the form in which it is desired to submit them periodically to the client, while everything in connection with the matter may be laid open for inspection without any disclosure of the auctioneer's other business. There is an added advantage, that the entries necessary in the auctioneer's own books are reduced to a minimum, consisting of a single cash entry each time he draws upon the special banking account in payment of his charges. It is not, however, practicable to keep complete and separate accounts in respect of miscellaneous rents collected for various small owners. With regard to these, the most convenient course to pursue is to open a ledger account in the name of each owner, credit that account with all cash received on behalf of the client, and debit it with remittances, disbursements, and charges. So far as the credit side of the account is concerned, it is especially desirable that the record of the transactions should be upon a cash basis, the owner being credited not with rent accrued due, but with rent actually collected, as it

is not until the money has been actually received by the auctioneer that he becomes liable to the owner in respect thereof. At the same time it is important that due record should be kept of rents accruing due and their collection. This, however, is best performed by the use of a "tabular" rent ledger, which may be conveniently kept as a statistical book only.

Insurance agency business has, from a book-keeping point of view, much that is in common with rent-collecting. A separate ledger account should be opened for each insurance office, to which premiums are credited as received from the policy-holders. The debits to this ledger account will (as in the case of rents) be comprised under the headings of Remittances, Disbursements charged up, and Commission earned. As a rule it is not necessary to keep any detailed permanent record of the collection of individual premiums. The insurance office will either supply the agent with counterfoil receipt books, in which case the counterfoils will supply full details of the premiums collected, or the office will supply the agent with a separate receipt filled up in respect of each premium collectable by him. Under the latter system the retention in the agent's hands of such receipts will be the only evidence admissible that the premiums have not been collected. The total cash credited in the ledger account should be carefully agreed with the total premiums shown in the quarterly account rendered to the insurance office before the latter is sent off; but when this agreement has been once effected it is unnecessary to keep any permanent record in detail, as, in case of need, the requisite information could always be obtained from the office. A matter that frequently calls for the exercise of care in practice is that premiums are frequently received on account of one quarter before a remittance has been made in respect of the previous quarter. As a rule, the quarterly remittance will not be made until six or eight weeks after the close of the quarter, while all premiums on new policies received more than a fortnight after quarter-day will be in respect of the following quarter. Such "new premiums" should be carefully ear-marked, so that when the ledger account is balanced off at the date of the quarterly remittance a balance may be brought down to the credit of the office, representing the aggregate amount of new premiums received since quarter-day that is not included in that remittance. To save further trouble, a note should be appended showing how this balance is made up.

A question of considerable importance in connection with auctioneers' accounts is the treatment of outstanding charges when the books are periodically balanced. If the system already described be employed, no charges will be debited to clients until such time as they become actually due, while the waste-book will contain a record of all the matters in various stages of progress upon which both time and money have probably been expended. The waste-book should be carefully examined and a schedule compiled therefrom of all the charges that are due, but which, for any reason, have not been yet recorded in the books of account. The total of this schedule should be passed through the journal to the debit of "sundry debtors for outstanding matters account" and to the credit of "charges account"; but it would be imprudent to credit the latter with anything in respect of work done which is not sufficiently advanced to make any charges legally payable by the clients. Such matters are best treated as a "secret reserve," without any attempt being made to apportion the charges that may ultimately mature between the periods during which the work has been actually performed.

With regard to the disbursements on account of uncompleted matters, if these are legally recoverable from the client in any event, they may of

course be properly regarded as assets; but in so far as they are only recoverable in the event of the business being brought to a successful issue, an important question arises as to how far (if at all) they can be regarded as assets at the date of balancing. The strictly correct course to pursue would doubtless be to treat nothing as an asset that was not immediately recoverable at law, but for practical purposes it is rarely necessary to adopt so strict a view, and it will generally be found practicable to form a fairly reliable opinion as to what the ultimate result will be in each case, and thus arrive at a minimum total of disbursements which may fairly be regarded as a good asset by reason of the fact that there is every probability that this sum will be ultimately recovered from the clients. The amount being so ascertained, a journal entry may be made, passing the total to the debit of a suspense account and to the credit of whatever nominal accounts have been previously charged with the various items of expenditure. This treatment of the subject proceeds, of course, upon the assumption that all such expenditure has been debited in the books to nominal accounts. When, however, disbursements have been debited to the various clients, the converse practice must be pursued, a suspense account being opened and credited with a special reserve to cover all disbursements so charged up which it is thought may by any possibility be ultimately found to be irrecoverable, a corresponding debit being made to a nominal account entitled "irrecoverable disbursements on account of clients," or some similar name.

It may be added that where any considerable portion of the auctioneer's business consists of rent-collecting it is generally convenient that the books should be periodically balanced at such dates as will ensure a minimum amount of rents being then outstanding. By this means the necessity of treating such rent-collections as matters in progress is obviated, and it need hardly be said that it is desirable that matters in progress should be kept down to the minimum possible. The same remarks apply to insurance agency business when this is undertaken upon an extensive scale.

LAWRENCE R. DICKSEE.

Audit.—In Scots law the word audit is used as an equivalent for the English law term taxation in reference to lawyers' accounts.

Auditing.

NATURE OF AUDIT	163	OTHER CLASSES OF AUDIT	174
ACCOUNT OF GOING AND COMPLETED CONCERNS	164	FUNCTIONS OF AUDITOR	176
ITEMS TO BE VERIFIED	165	PROVISION FOR DEPRECIATION, ETC.	179
RELATION OF BALANCE-SHEET TO REVENUE ACCOUNT	168	LIABILITIES OF AUDITORS	182
DIFFERENT CLASSES OF AUDITS	169	PRIVATE AUDITS	187
THE COMPANIES ACT, 1900	170	METHOD AND EXTENT OF AUDIT	189

AUDITING may be defined as an examination of accounts with a view to testing the accuracy of the entries contained therein. This definition may be said to be the general principle that underlies all descriptions of audits, but of course it becomes necessary to supplement it to a considerable extent with regard to individual cases.

Before considering such cases separately, it is convenient to draw attention to the broad distinction between two wholly different classes of accounts. Certain accounts purport to represent statements of fact, while

others are admittedly an estimate of an existing position of affairs. Most accounts that will be met with in the course of business are a combination of these two.

If a particular venture has been undertaken and carried to a conclusion before the accounts in relation thereto are prepared, and the ultimate result reduced to a cash basis, the most concise means of showing the transactions involved is of course a simple summarised Account of Receipts and Payments, and such an account is a statement of fact, showing what sums have actually been received, what sums have been paid actually in respect of the venture, and what (if any) balance remains in the hands of the accounting party in cash. Such a statement is, of course, capable of absolute verification, and, however complicated its details, it should (if the accounting parties have performed their duties properly) be capable of being conclusively verified by the auditor, whose certificate or report thereon should be upon the lines of an actual certification of facts.

In the case of most commercial concerns, however, the position of affairs that the auditor is called upon to consider is by no means so simple. In the first place, as a rule it is inconvenient to wait until the absolute termination of the venture or undertaking before any audit takes place. It is usual for periodical audits to be undertaken at fixed intervals, partly because it is desirable and convenient that, as far as may be, the results up to date may be made known, and partly because—inasmuch as it is one of the functions of an auditor to detect and expose irregularities of all descriptions—it is, to say the least of it, convenient that such detection and exposure should take place as soon as may be after the actual commission of the offence. It is, however, a point that is too apt to be lost sight of (more particularly by those who are not trained accountants) that such periodical audits as have been before mentioned are, in the nature of things, but an *interim* examination into a pending matter, and, as such, by no means final.

In order to make this statement clear, attention may be drawn to the fact that whereas the accounts relating to a completed matter—as for instance a consignment, or a joint venture of any kind—can be conveniently reduced to a simple summarised cash statement, the accounts relating to a pending matter, such as those relating to any commercial business that is still being carried on, cannot be completely disclosed by any Cash Account, no matter how ingeniously devised. A Cash Account, like every other form of account, has its limitations, and although it is still the only account that is ordinarily asked for by the English Court of Chancery (which with its ancient traditions is probably the most conservative institution in the United Kingdom), it has long ago been realised by commercial men that something further is required from accounting parties in order to set forth the position of affairs in relation to matters still pending.

The generally accepted idea among business men is that the position of affairs in connection with a going concern can be best shown by means of a Balance Sheet, which is a statement of the assets and the liabilities of the undertaking as at the date thereof, and a Revenue (or Profit and Loss) Account, showing its earnings and expenses since the date when the last periodical account was taken. The preparation of a Profit and Loss (or Revenue) Account, however, presupposes the existence of a complete set of books kept by double-entry, and although double-entry book-keeping was discovered upwards of 400 years since, even to the present time it is not absolutely universal in connection with the accounts of commercial undertakings, still less is it invariably employed with regard to non-trading

concerns. At the very least, however, it is necessary that any accounts purporting to record the position of a concern that is still being carried on should comprise a summarised Cash Account of receipts and payments from the date of the previous taking of accounts, and a Balance Sheet (or statement of assets and liabilities) showing the financial position of the undertaking at the then present time. The Cash Account so prepared is naturally as capable of absolute verification as the Cash Account of a completed undertaking, in that every entry recorded therein is of the nature of a statement of fact. The various items that constitute the Balance Sheet, however, come under an entirely different category.

The Balance Sheet of a going concern is a summarised statement of its assets and of its liabilities at any particular date, and if only for the reason that the undertaking is a going concern these various items, or at least the majority of them, are in the nature of things incapable of absolute verification. This idea is so little understood that it is perhaps desirable to discuss it in further detail, and to enable this to be done upon a convenient basis, the following typical form of Balance Sheet is reproduced in this connection on p. 166.

Taking the various items shown therein *seriatim*, and dealing first with the debit side of the account, the particulars in respect of heading I. are, of course, capable of verification, relating as they do to the actual number of shares allotted, the amount paid up thereon, the amount (if any) in arrear, and to the shares that have been forfeited for non-payment of calls. These various points are, of course, in essence items of a Cash Account, and as such, for the reasons already explained, are capable of absolute verification. At the same time, from the point of view of an auditor, it may be stated that it is not every item which is theoretically capable of being definitely stated as a matter of fact that can in practice be verified by the auditor in the ordinary discharge of his duties. The auditor—like every other person who is virtually appointed a judge upon questions of fact—can only arrive at the facts by the due consideration of evidence, and it is not always practicable to obtain all the outside evidence that might theoretically be considered necessary in order to arrive at an absolute assurance as to the position of affairs. This limitation of the available basis of the auditor's inquiry becomes increasingly apparent as the other items that go to constitute the Balance Sheet are considered.

Passing on to Section II., which deals with the debts and liabilities of the undertaking, it may, in many cases, be possible to obtain independent verification of these by the inspection of statements of account submitted by the creditors themselves; but such statements are not always available, while a clerical error in a statement submitted by a creditor would not necessarily have the effect of expunging the liability itself.

It is, however, when we pass on to the credit (or assets') side of the Balance Sheet that the necessarily tentative nature of any such statement of account becomes most obvious. Section III. relates to visible property owned by the undertaking. It may in general be practicable for the auditor to satisfy himself that such property is in the legal or beneficial ownership of the undertaking whose accounts he is considering; but intricate points of law may sometimes arise that would negative the presumptive evidence in favour of such ownership, and as no tribunal short of the House of Lords can conclusively settle such disputes, it must be manifest that the mere opinion of the auditor in connection therewith is not necessarily final. And if the auditor's opinion with regard to the actual ownership of such assets may be subject to revision, still more so is the

BALANCE SHEET OF THE COMPANY, MADE UP TO 19

Dr. CAPITAL AND LIABILITIES — PROPERTY AND ASSETS *Cr.*

	£	£		£	£
I. CAPITAL— Showing			III. PROPERTY HELD BY THE COMPANY— Showing		
1. The number of shares			7. Immovable property, distinguishing—		
2. The amount paid per share			(*a*) Freehold land		
3. If any arrears of calls, the nature of the arrear, and the names of defaulters			(*b*) Freehold buildings		
4. The particulars of any forfeited shares			(*c*) Leasehold ,,		
II. DEBTS AND LIABILITIES OF THE COMPANY— Showing			8. Movable property, distinguishing—		
5. The amount of loans on mortgages or debenture bonds			(*d*) Stock in trade		
6. The amount of debts owing by the Company, distinguishing—			(*e*) Plant		
(*a*) Debts for which acceptances have been given			The cost to be stated with deductions for deterioration in value, as charged to the reserve fund or profit and loss		
(*b*) Debts to tradesmen for supplies of stock in trade or other articles			IV. DEBTS OWING TO THE COMPANY— Showing		
(*c*) Debts for law expenses			9. Debts considered good for which the Company holds bills or other securities		
(*d*) Debts for interest on debentures or other loans			10. Debts considered good for which the Company holds no security		
(*e*) Unclaimed dividends			11. Debts considered doubtful and bad		
(*f*) Debts not enumerated above			Any debt due from a director or other officer of the Company to be separately stated		
VI. RESERVE FUND— Showing			V. CASH AND INVESTMENTS— Showing		
The amount set aside from profit to meet contingencies			12. The nature of investment and rate of interest		
VII. PROFIT AND LOSS— Showing			13. The amount of cash, where lodged, and if bearing interest		
The disposable balance for payment of dividends, etc.					
CONTINGENT LIABILITIES—					
Claims against the Company not acknowledged as debts					
Moneys for which the Company is contingently liable					

statement of account that he approves of a tentative nature when it comes to a question of the value in pounds, shillings, and pence to be attached to each of the various items comprised under this heading. In the first place, if two equally eminent valuers of property were commissioned to make a valuation of the assets of any particular undertaking, the probability is that their views as to value would differ by at least 10 per cent, and quite possibly to a very much larger extent. Indeed, in the nature of things, such a valuation must be essentially to a very large extent a matter of opinion, even assuming that there were no good grounds for differing as to what the actual basis for the valuation should be. Secondly, it may be pointed out that an auditor is not—and has been invariably admitted, by all legal decisions bearing upon the point, not to be—necessarily an expert valuer, and consequently his review of the valuation placed upon assets by the accounting party is (if anything) less likely to be accurate than that of the expert valuer whose fallibility has already been demonstrated. Thirdly, it may be pointed out that the actual value of anything at any given time is of necessity unfixed, and indeed, not so much a question of fact as a matter of circumstance or of opportunity. For example, the value of lands and buildings, whether freehold or leasehold, depends less upon the annual income to be derived therefrom (which itself is a fluctuating item), than upon a competition for the possession of those particular premises. This is naturally a matter dependent entirely upon circumstance and opportunity, and equally a matter which, so far from being fixed, will of necessity vary from time to time, apart altogether from the co-ordinate factor of depreciation, which of itself must not be forgotten, and is, moreover, of a highly debatable and uncertain nature.

By this time enough has doubtless been said to show that at whatever figure visible assets may be stated in the Balance Sheet of an undertaking, that figure cannot reasonably be regarded as a statement of fact, but must, in all fairness, be looked upon as an expression of opinion, which, however deliberate and however expert, is of necessity tentative and temporary.

These same remarks apply in a hardly smaller degree to Section IV., viz. the enumeration of debts owing to the undertaking. It is true that, in connection with this section, one has not to consider the possibility of any increase in value, in that the majority of ordinary trade debts can be at any time discharged by the payment of the actual sum due; but in assessing for Balance Sheet purposes the value of Balance Sheet items, regard must, of necessity, be had to the contingency of payment being delayed for an appreciable period, or of the debt being found to be irrecoverable, either because it is not legally due, or because the persons legally liable to pay it are physically unable to do so. *Per contra*, when due allowance has been made for these contingencies, a figure is arrived at which, so far from being an actual statement of fact, is but the opinion of some more or less qualified person as to the amount that may eventually be expected to be received in respect of these legal rights and obligations. Such an opinion may be either unduly optimistic or unduly pessimistic, and in any event is clearly no statement of absolute fact.

Passing on to Section V., it might perhaps, at first sight, be thought that the actual investments and cash owned by an undertaking were at least capable of absolute verification. This is, of course, the case with regard to cash (save that cash at bank is, for all practical purposes, a book debt, and as such liable to reduction through the financial failure of the debtor); but, apart from this contingency, which in the present state of banking finance is comparatively remote, there is the infinitely more

important question of the value of stocks, shares, and debentures that are comprised under the general heading of "Investments." All these items are in the nature of things essentially of a fluctuating value, as the slightest acquaintance with Stock Exchange matters will show that the prices of most of the leading securities vary, not merely daily, but also from hour to hour, and in consequence the realisable value of such investments is of an equally uncertain character. There is, moreover, this further very important factor to be borne in mind, that the market price of a particular class of investment is not necessarily any true indication of the realisable value of any considerable quantity thereof. In a so-called "sensitive" market any considerable sale or purchase would inevitably bring about an immediate revision of prices, so that even the index of value to be obtained from Stock Exchange official lists is itself of a tentative character. It will thus be seen that, even supposing the market price to be assumed as a basis, it cannot properly be regarded as an altogether real one, while of course in the case of many stocks, shares, and debentures there is no official quotation, or the dealings are so few that the official quotation is nominal rather than real.

Passing on to Section VI. (which reverts to the debit side of the Balance Sheet), the reserve fund may be defined as the amount that has been set aside in previous periods out of profits to meet unforeseen contingencies. It is in essence a portion of the Profit and Loss Account balance that has been specially "ear-marked" as being reserved, or kept in hand, with a view to strengthening the financial position of the undertaking; but, like every other item making up the Balance Sheet as a whole, it is less a statement of fact than a record of some one's opinion as to what the facts consisted of at a particular point of time. In the first place, it is dependent upon the maintenance of a surplus of assets over liabilities, and it has already been shown that this surplus is a far more unstable factor in actual fact than it is upon paper; while in the second place, it is extremely important to bear in mind that by no possible means can the *continued* existence of a reserve fund be assured independently of the continued existence of the surplus of assets as a whole over liabilities as a whole. The opinion is very generally (but quite erroneously) entertained that, if an equivalent amount of money be taken out of the coffers of the undertaking and specially invested, the reserve fund can be made "real" and permanent. This opinion is based upon the erroneous assumption that the reserve fund is, or could ever be, anything other than a specially ear-marked portion of the undivided profits of the undertaking. It is only so long as undivided profits are retained in hand that they can continue in actual existence, either as ear-marked or in any other specified form; and this being admitted, it follows —equally as a matter of course—that whatever loss may be subsequently made or realised must, in the first place, reduce the profits in hand. The balance of general profit and loss (which is shown under Section VII.) is, of course, the first item to be expunged by such loss as may be incurred, but the moment that balance has been wiped out losses must, in the nature of things, tend to reduce the amount of the reserve fund, even although investments still remain in existence which have been erroneously supposed to represent the reserve fund itself.

This brings us to a further consideration of the Balance Sheet as a whole. The amount of profit that may be shown from time to time obviously depends upon the views entertained by those who have valued the assets and liabilities. If their views be pessimistic the profits have been understated; if they have been optimistic, the profits have been over-

stated, and whatever figures the accounts may record they will naturally have no effect upon the actual facts. Until the concern is ultimately concluded and wound up, no absolute statement of the real facts of the case is humanly possible. In the meantime, all those in search of information as to the position of affairs must, in the nature of things, be dependent upon what is (when it is closely examined) nothing more than the opinion of those who have the best means of being fully acquainted with the position of affairs. The auditor is naturally not likely to be better informed of the facts than the accounting parties themselves; but as an expert in accounts, he may have special knowledge that will enable him to usefully criticise their opinions, and if need be to correct them. It cannot, however, be too strongly stated in a work of general reference such as this, that the audited Balance Sheet of a going concern is not a statement of fact, but a statement of opinion, which opinion, however well informed, and however carefully exercised, must of necessity be more or less fallible.

From the above description of the general nature of an audit it will be seen that both the result and the means by which that result may be best attained vary materially according to the nature of the accounts that have to be examined, and that for practical purposes almost every set of audited accounts is, to a greater or smaller extent, a statement of opinion rather than a statement of fact.

The origin of auditing is somewhat remote, and it is unnecessary for present purposes to attempt to trace it back to its beginnings. References to auditors have been traced back as far as the thirteenth century, when the accounts rendered were apparently rendered verbally, and therefore *heard* by the auditors, who at the same time heard all other persons who considered that they had a grievance against the accounting party. It is to this circumstance, doubtless, that the name "auditors" is due, but the precise nature of the inquiry instituted by auditors does not appear to have at any time very materially varied. Persons undertaking the discharge of business for or on behalf of others, or in any other way rendering themselves accountable to others, have at all times been naturally expected to render such accounts when called for, and also generally as a matter of convenience at stated periodical times. In some cases the principal party himself receives the account and makes such inquiry as he may consider necessary. In such a case the principal is his own auditor, although the term is not then usually applied to him. The term "auditor" is more usually applied to one who inquires into the accuracy of accounts on behalf of another or others, although not infrequently he may be jointly interested with those others as a principal.

For example, in the earlier days of joint stock enterprise it was the invariable practice for the auditor (if one were appointed) to be a shareholder in the company, and in such a case the analogy between a company and a partnership was more closely preserved than is at the present time apparent. For all essential purposes, however, a joint stock company is a partnership, and the rights of its members are the rights of partners *inter se*, save as specially limited by statute, or by the regulations of that particular undertaking. For obvious reasons it is inconvenient, save in the case of the smallest and most private companies, that every member should be allowed at all times to have access to all the books of account in the same way that such right of access is accorded to the partners in a firm; and because such unrestricted rights cannot be conveniently given to the members of companies, the practice has grown up of allowing them to nominate someone to examine the books and accounts on their behalf, and to report to

them from time to time thereon. Such provisions with regard to auditors appeared in the Companies' Clauses Consolidation Act, 1845, the Railway Companies Act, 1867, the Companies Act, 1879, the Building Societies Act, 1894, etc.; but, singularly enough, it was not until 1900 that an Act was passed rendering an audit compulsory in the case of all companies registered under the Companies Act, 1862, that is to say, in the case of ordinary joint stock companies. Prior to the passing of the Companies Act, 1900, however, the audit of registered companies was very general, being provided for in the Articles of Association registered by most joint stock companies, and also by table "A" appended to the Companies Act, 1862, which supplies the *pro forma* Articles of Association applicable to all companies registered without special articles. The practice of auditing has thus been very general in the commercial world long before it became compulsory. The accounts of many private firms are also regularly audited on behalf of the partners, although no regulation exists requiring this to be done.

The powers and duties of auditors naturally vary to some extent according to the precise nature of their appointment. As, however, the vast majority of such appointments are in connection with companies registered under the Companies Act, 1862, and the Acts amending that measure, it will be convenient, in the first place, to consider the duties of the auditors of such companies, and to afterwards indicate the manner in which these duties may be modified by special considerations.

The duties of auditor under the Companies Acts are defined by section 23 of the Companies Act, 1900, which is as follows:—

> Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors, and the auditors shall sign a certificate at the foot of the Balance Sheet, stating whether or not all their requirements as auditors have been complied with, and shall make a report to the shareholders on the accounts examined by them, and on every Balance Sheet laid before the company in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the Balance Sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting.

It will be seen that this section provides for the auditor performing a definite audit each time a Balance Sheet is laid before the shareholders in general meeting. It may be mentioned, however, that nowhere in any of the Companies Acts is it expressly provided that a Balance Sheet shall ever be submitted to the shareholders, although it is provided that a general meeting shall be held at least once a year. The usual practice is, however, undoubtedly for Balance Sheets, accompanied by Trading and Profit and Loss Accounts, to be submitted annually, if not at more frequent intervals.

The functions of the auditor are, however, not limited to this examination of the periodical accounts, for section 23 gives every auditor the right of access at all times to the books and accounts and vouchers of the company, and the right to require from the directors and officers of the company such information and explanation as may be necessary for the performance of his duties. It is thought, however, that these provisions are permissive only, and that under ordinary circumstances an auditor need not attend at frequent intervals unless there appear to be reasonable grounds for such a necessity in the interests of the company. At the same time, it is not

unusual for a special arrangement to subsist between the company and the auditors, requiring the latter to attend at frequent intervals and keep their examination of the books and accounts fairly closely up to date. Such an audit is called a "continuous audit," and possesses the material advantage, that if mistakes have been made in the books they are discovered at an earlier stage, when there is a better likelihood of their being rectified without loss. It also enables a more detailed examination of the accounts to be made without delaying the presentation of the final accounts to a general meeting of the shareholders. On the other hand, a continuous audit offers somewhat less security against fraud on the part of book-keepers, who may then sometimes conceal their defalcations by altering entries that have been examined and passed by the auditors at their interim visits. Where such a special arrangement exists for an interim audit at monthly or other short periods, a special duty not unnaturally devolves upon the auditor to take adequate safeguards with a view to the prevention of fraud on the part of those keeping the company's accounts. This might be said to follow as a matter of course, the prevention of fraud being indeed the primary object of the continuous audit *per se;* but apart from that, the case of *Martin* v. *Isitt* (which came before the late Lord Chief Justice Russell of Killowen and a special jury in March 1898), and the decision of the Irish Court of Appeal in the *Irish Woollen Company, Ltd.* v. *Tyson and others* (in January 1900), tend to further support this view. In so far as the regulations of each individual company bear upon the matter, they may tend to enlarge the scope of an auditor's duties and responsibilities; but nothing can reduce these responsibilities beyond the limits set down in section 23 of the Companies Act, 1900. These provisions appear upon a close examination to be by no means so definite as might be thought upon first perusal, and their actual meaning may therefore be profitably discussed at some length.

In the first place, it may be mentioned that, shortly after the passing of the Companies Act, 1900, the Council of the Institute of Chartered Accountants in England and Wales obtained the opinion of four leading counsel with regard to the matter. A case was submitted to Messrs. R. B. Haldane, Q.C., M.P.; C. Swinfen Eady, Q.C. (now Mr. Justice Swinfen Eady); A. R. Kirby; and F. B. Palmer; and their joint opinion, given on the 12th December 1900, was as follows:—

(1) In our opinion the provisions contained in sections 21, 22, and 23 of the Companies Act, 1900, are supplemental to and not in substitution for provisions as to audit contained in the Companies Act, 1879 (where applicable), and in Articles of Association or regulations of a company, and, accordingly, we are of opinion that the Act of 1900 does not relieve an auditor from the necessity of complying with such provisions, even though the latter impose obligations beyond those imposed by the Act of 1900. In so far, however, as the Act of 1900 is inconsistent with the earlier provisions the Act must, of course, prevail.

(2) In our opinion the words "books of the company" in section 23, which gives to the auditor a right of access at all times to the books and accounts and vouchers of the company, mean all the books—not merely the books of account of the company; the words, therefore, include the minute books and letter books.

(3) In our opinion the word "requirements" in section 23, which makes it necessary for the auditor's certificate to state whether or not his requirements as auditor have been complied with, is used in its popular sense, and not as referring merely to what he is entitled to require under the preceding words of the section.

(4) In our opinion, where the auditor's requirements are not complied with, the auditor should specify in his certificate in what respects they have not been complied with; and if there is no Balance Sheet on which to place the certificate then the auditor should so specify in his report. But if the specification of the instances of non-compliance be lengthy, we see no objection to the certificate

stating that all the requirements have not been complied with without specification of details, provided that it refers to the report for the details.

(5) In our opinion the certificate and report referred to in section 23 must be separate and separately signed, even though both be placed on the Balance Sheet. There would, however, be no objection, if it be desired, to connect the certificate with the report by inserting in the certificate a reference to the "subjoined" or "accompanying" report; and, as an alternative, where thought expedient, the certificate might set out the report verbatim thus: I certify, etc., and I report to the shareholders that, etc. Signed A. B. If, however, this course be adopted it will, in our opinion, still be necessary that the auditor should make and sign the report separately, and send it in to the directors to be placed before the shareholders.

(6) As regards the form of certificate, it may run thus:—

Auditor's Certificate

In accordance with the provisions of the Companies Act, 1900, I certify that all my requirements as auditor have been complied with.

And the report might run thus:—

To the shareholders of the Company, Limited

Auditor's Report

I have audited the above Balance Sheet (or the company's Balance Sheet dated the day of), and in my opinion such Balance Sheet is properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company.

(7) Section 23 of the Act of 1900 requires the auditor to report whether the Balance Sheet is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company. In our opinion these words, "as shown by the books of the company," do not limit the auditor's duties to a comparison of the figures. No doubt he has to examine the books, but as Lord Justice Lindley said, *in re The London and General Bank* (1895, 2 Ch. 683): "He does not discharge his duty by doing this without inquiry, and without taking any trouble to see that the books themselves show the company's true posititon. He must take reasonable care to ascertain that they do so."

R. B. HALDANE.
C. SWINFEN EADY.
A. R. KIRBY.
FRANCIS B. PALMER.

Lincoln's Inn,
12th December 1900.

It will be noticed that, while undoubtedly instructive upon many points, this opinion is disappointing in that it affords no guidance to a practitioner upon the one point upon which opinion appears to be most divided, namely, as to the respective functions of the certificate to be attached to the foot of the Balance Sheet and the report to be submitted to the shareholders at their annual meeting. Counsel go so far as to say that the certificate and the report referred to in section 23 must be separate and separately signed; but, on the other hand, they see no objection to connecting the certificate with the report by inserting in the certificate "a reference to the subjoined or accompanying report," and add that as an alternative the certificate might, where thought expedient, set out the report verbatim. In order to grasp the full significance of this point it is desirable, perhaps, to consider the usual practice among auditors prior to the passing of the 1900 Act.

Up to that time auditors were guided solely by the contract subsisting between themselves and each particular company, which contract was, to some extent, explained by the Articles of Association. Such Articles of Association usually followed fairly closely the terms of articles 83 to 94 of

table "A" already referred to, and required the auditors to make a report to the members upon the Balance Sheet and accounts; and in every such report to state whether, in their opinion, the Balance Sheet was a full and fair Balance Sheet containing the particulars required by the company's regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs. The usual practice, where the Balance Sheet and accounts were printed and circulated among the shareholders, was to print such auditor's report at the foot of the Balance Sheet, and from many points of view this custom was convenient, as enabling all whom it might concern to readily gauge the position of the undertaking by a perusal of the published accounts and the auditor's comments thereon.

So long as the auditor's report was entirely favourable there would naturally be no objection on anybody's part to its being so published; but in cases where the auditor found it necessary to unfavourably criticise the accounts a difficulty not unnaturally sometimes arose as to the precise wording of the auditor's report, and directors brought pressure to bear with a view to securing a modification of the nature of its contents, urging the plausible argument that unfavourable statements published broadcast, and accessible not merely to shareholders but also to creditors and competitors, might easily have the effect of seriously injuring the company, whose interests the auditor was so far as practicable bound to consider. Hence arose the practice in such cases, when unfavourable comment upon the part of the auditor became essential, of a separate unpublished report being issued supplemental to the more or less formal report or certificate appearing at the foot of the Balance Sheet, which latter alone was printed and published. The non-publication of the unfavourable report served, of course, the object of the directors, but it was found in practice not to altogether serve the interests of the shareholders, in that, being accustomed to look for all that the auditor had to say at the foot of the published accounts, they not unreasonably failed to inquire for any separate report that the auditor might have issued. There are, it may be incidentally mentioned, cases upon record in which the auditor has been held to be negligent in the discharge of his duties in not taking adequate steps to see that the shareholders were made cognisant of the contents of a special report which he had submitted on the accounts of the company, and which had not been printed (*vide London and General Bank* case (No. 2) L.R. 1895, 2 Ch. 673, Court of Appeal, 1895).

To meet these difficulties, it will be observed that section 23 of the Companies Act, 1900, has provided that a confidential report to the shareholders (*i.e.* a report that the directors are not required to print and publish) shall, IN ALL CASES, be made by the auditor; and there can, it is thought, be no doubt that the object of this provision was to give the auditor a free hand to report to the shareholders whatever he might think fit, while at the same time impressing upon shareholders generally the fact that the law required such a separate report to be always provided, and thus putting them on inquiry to ask for its production at each general meeting.

It need hardly be pointed out, however, that the practice of, as a rule, incorporating the report verbatim in the certificate appended to the foot of the Balance Sheet is calculated to render nugatory the wise provisions of this section. In the ordinary course it tends to make shareholders forget to ask for the production of the unpublished report, and so tends to stifle that intelligent and active interest upon the part of shareholders which the clause seems to have been intended to encourage; while, in the second

place, it makes it increasingly difficult for auditors who have something special and unfavourable to report, to confine their comments to the unpublished report, and to omit all reference thereto from the form of printed certificate. For these reasons it is submitted that the practice of continuing to report upon accounts in exactly the same manner as was customary before the Companies Act, 1900, was passed, however general, is to be deprecated. It need hardly be pointed out that the time when an auditor has something specially unfavourable to report is in practice the most inconvenient—and in every way undesirable—time for him to embark upon an altogether different method of conveying his views to the general body of the shareholders.

With regard to the formal certificate to be appended to the foot of the Balance Sheet, certifying that the auditor's requirements have all been complied with, it is submitted that the word "requirements" cannot refer to anything more than that which the auditor is legally empowered to call for. It is thought, therefore, that the requirements of an auditor have been complied with when he has been supplied with the proper accounts and all proper facilities for verifying the same. It may sometimes happen that, as an expert in accounts, or as a prudent financier, he would prefer to see something different from that which obtains; but there is a difference between what an auditor may recommend to be done, or between what he would like to see done, and what he is empowered by law to see shall be done. So long as the *legal* requirements of the auditor are complied with, his formal certificate should, it is thought, be unconditional; while, on the other hand, if his recommendations have not been acceded to, the matter will be a proper one to communicate to the shareholders in the auditor's report. At the same time, as so many practitioners make it a practice to say nothing in their report which is not also included in the certificate at the foot of the Balance Sheet, it is recommended that those who adopt what is thought to be the proper practice should invariably draw attention in the certificate to the existence of a separate report.

Passing on to the audit of the accounts of other undertakings, the same general principles will, of course, still apply, but special statutory requirements (where they exist) must be observed. For example, under the Companies' Clauses Consolidation Act 1845 (which Act is incorporated in the private Act of almost every company incorporated by special Act of Parliament), the duties of the auditors are those defined in sections 106-108, as follow:—

106. The directors shall deliver to such auditors the half-yearly, or other periodical accounts and Balance Sheet, fourteen days at the least before the ensuing ordinary meeting at which the same are required to be produced to the shareholders, as hereinafter provided.

107. It shall be the duty of such auditors to receive from the directors the half-yearly, or other periodical accounts and Balance Sheet required to be presented to the shareholders, and to examine the same.

108. It shall be lawful for the auditors to employ such accountants and other persons as they may think proper at the expense of the company; and they shall either make a special report on the said accounts, or simply confirm the same; and such report or confirmation shall be read, together with the report of the directors, at the ordinary meeting.

This power to employ "accountants and other persons" is—it may be mentioned in passing—a most useful one in the case of lay auditors; but, now that the employment of professional auditors has become so general, it has fallen into disuse.

The Railway Companies Act, 1867, throws a special duty upon the

auditors to approve every dividend that is proposed to be declared. The duties of auditors under this Act are comprised in section 30, which reads as follows :—

No dividend shall be declared by a company until the auditors have certified that the half-yearly accounts proposed to be issued contain a full and true statement of the financial condition of the company, and that the dividend proposed to be declared on any shares is *bona fide* due thereon, after charging the revenue of the half-year with all expenses which ought to be paid thereout in the judgment of the auditors ; but if the directors differ from the judgment of the auditors with respect to the payment of any such expenses out of the revenue of the half-year, such difference shall, if the directors desire it, be stated in the report to the shareholders ; and the company in general meeting may decide thereon, subject to all the provisions of the law then existing, and such decisions shall, for the purpose of the dividend, be final and binding ; but if no difference is stated, or if no such decision is given on any such difference, the judgment of the auditors shall be final and binding ; and the auditors may examine the books of the company at all reasonable times, and may call for such further accounts, and such vouchers, papers, and information as they think fit, and the directors and officers of the company shall produce and give the same as far as they can, and the auditors may refuse to certify, as aforesaid, until they have received the same ; and the auditors may at any time add to their certificate, or issue to the shareholders independently, at the cost of the company, any statement respecting the financial condition and prospects of the company which they think material for the information of the shareholders.

The latter part of this section, which empowers the auditors to communicate with the shareholders direct, is of special interest inasmuch as no such power rests with auditors under the Companies Acts (*vide* decision *in re Joseph Hargreaves, Ltd.*).

The Building Societies Act, 1894, deals with the auditor's duties in section 2 (2) as follows :—

Every auditor, in attesting any such annual account or statement, shall either certify that it is correct, duly vouched, and in accordance with law ; or specially report to the society in what respects he finds it incorrect, unvouched, or not in accordance with law ; and shall also certify that he has, at that audit, actually inspected the mortgage deeds and other securities belonging to the society, and shall state the number of properties with respect to which deeds have been produced and actually inspected by him.

The *pro forma* certificate to be appended to the accounts is in the following form :—

We, the undersigned, , being a person who publicly carries on the business of an accountant at No. Street, , and residing at , the duly appointed auditors of the above-mentioned society, do hereby attest the foregoing accounts and statements, and certify that they are correct, duly vouched, and in accordance with law ; and we certify that we have, and each of us has, at this audit, actually inspected the mortgage deeds and other securities belonging to the society in respect of each of the properties in mortgage to the society referred to in the foregoing account and statements.

Signed
Signed

day of 19

Presented to the Annual General Meeting of the Society on the day of , and adopted.

Signed Chairman.

Countersigned,

Secretary.

It will be seen that in points of detail the auditor's functions vary somewhat under different circumstances, but the general underlying principle is the same in every case, namely, that the auditor should be some independent person called in to examine the accounts (for the actual preparation of which he is not responsible), and to report thereon to those persons to whom the managers of the undertaking have to account. In so far as the audit consists of a verification of facts, the auditor's task is of a comparatively simple nature, although for its due discharge special and highly technical qualifications are necessary. This portion of an auditor's duties need not be considered in full detail beyond drawing attention to a few leading principles.

It has been stated by Lord Davey, that "an auditor is bound to know everything that the books tell him, to have all the suspicions that the books suggest, and to make all the inferences to which what he finds in the books would lead him." That is to say, that if a detailed and intelligent examination of the books would reveal inconsistencies, then it is to be expected that the auditor will note these inconsistencies and call for such explanations as may be necessary to clear the matter up. His lordship's words were, however, used rather as indicating a limitation of the auditor's duties than as attempting an exhaustive definition, his point being, apparently, that the auditor cannot be expected to be omniscient, or to be possessed of second sight, and that as he cannot in the nature of things be required to make independent inquiries of every one who may have had business transactions with the undertaking whose accounts he is examining, he must, in the absence of suspicious circumstances, be entitled to a reasonable starting-point, behind which he cannot be required to go. Lord Davey places that starting-point at the books of the company, but points out that if a careful examination of those books raises a *prima facie* case for inquiry, then it may be necessary to go more deeply into the matter.

For example, under normal circumstances, with a view to verifying the amount due from an undertaking to its trade creditors, it will be sufficient to examine the invoices and statements of accounts and the record thereof in the books of the undertaking. If, however, there would appear to be reason to suppose that the books had been indifferently or deceitfully kept, and that liabilities had been omitted, then further inquiry would be necessary before a satisfactory report could be given. At this stage, however, it may be pointed out that an auditor is not empowered to examine any one not in the employment of the company, nor apparently would he be justified in making outside inquiries on his own initiative. He may recommend that such inquiries be made, under such supervision as may in his judgment seem necessary to confirm their utility, and if the directors assent, the points in doubt may thus be satisfactorily cleared up; but if the auditor is doubtful as to whether the books record the actual facts, and the directors decline to accede to his request for an independent verification, the only course open to the auditor is to report the exact position of affairs to the shareholders, who, being thus made cognisant of the facts, are in a position to act as they may think best.

It is no part of an auditor's duties to set everything upon an ideal, or even upon a proper, basis; his functions are limited to an inquiry and report.

Passing on to those entries in accounts which record, not facts, but expressions of opinion, the same general principle applies. It is no part of an auditor's duty to construct accounts such as, in his opinion, will best disclose the position of affairs. His duty is limited to reporting upon

those accounts which have been prepared by the management. Upon those points which are matters of opinion, and not questions of fact, it is quite possible that the auditor's views may differ from the views expressed in the accounts themselves. His first duty is to see whether the accounts sufficiently disclose the actual position of affairs; and if they do not, it becomes his duty to report wherein (in his opinion) the accounts, as stated, are defective in this particular. But although it has been thought necessary to insist very strongly upon the fact that every Balance Sheet must, in the nature of things, be largely the expression of an individual opinion, it must not be forgotten that such opinion, to be sound, must have been formed upon the basis of certain well-defined and generally accepted questions of principle. These questions have now to be considered.

From the point of view of theoretical book-keeping, the Profit and Loss (or Revenue) Account of an undertaking shows the results of its operations during the period covered by such account, while the Balance Sheet shows the position of affairs at the end of these operations. Theoretically speaking these two accounts will in all cases show the same result, that is, the profit shown by the Profit and Loss (or Revenue) Account will appear in the Balance Sheet as increasing the excess of assets over liabilities to a corresponding extent. In practice, however, the position is complicated by the very important consideration that it is not every increase in the value of assets that may be properly regarded as current gains, nor every decrease that need be regarded as a current expenditure or loss. The question as to what actually constitutes "profits" that are available for distribution in the form of dividend is a most intricate one, upon which numerous legal decisions have been given without so far formulating any very definite principles for future guidance. This much may, however, at least be confidently stated, that under some circumstances an undeniable loss may have been experienced which need not be debited to profit and loss (*Verner* v. *The General and Commercial Investment Trust, Ltd.*, 1894, 2 Ch. 239; *Wilmer* v. *M'Namara and Co., Ltd.*, 1895, 2 Ch. 245, etc.); while in other cases it has been held *per contra* that an admitted increase in the value of assets must not be credited to revenue (*Foster* v. *The New Trinidad Lake Asphalt Co., Ltd.*, 1901, 1 Ch. 208).

For practical purposes it is undoubtedly convenient (to use no stronger term) that the Profit and Loss (or Revenue) Account should be so prepared as to show as a balance those profits that are legally available for distribution, and to enable this to be done those gains or losses which do not legally affect revenue account must for this purpose be disregarded. In order to preserve the double entry, and also to preserve a desirable consistency in the accounts themselves, it follows that the Balance Sheet must—at all events to some extent—be constructed upon the same principles, and to enable this to be done it becomes necessary that certain admitted facts should be disregarded, and certain items of assets, or liabilities, stated at a figure other than their estimated valuation. For example, assuming that an undertaking has experienced a loss through the shrinkage in value of certain assets which, on account of its special nature, is not a loss that need be deducted from profits before arriving at the net amount available for dividend; then, in order that the Balance Sheet may agree with the Profit and Loss Account, it is necessary to overstate the total of the assets' side of the Balance Sheet. This may be effected by allowing the particular asset concerned to be upheld at cost, notwithstanding the shrinkage in value; or the loss may be carried to a special account, which, instead of being transferred to the debit of revenue, is upheld as an asset upon the Balance Sheet.

Similarly, if a company has been formed to take over a going concern, and a fixed price has been paid for the undertaking as it stands, then if the liabilities taken over are found to exceed the anticipated amount it is not legally necessary that the excess should be at once charged against profits. On the other hand, it would be manifestly misleading to state the liabilities in the Balance Sheet at less than the ascertained figure, and therefore, in order to preserve the equilibrium of the Balance Sheet, some asset must be written up to a corresponding extent. The asset so written up under normal circumstances would be the Goodwill account. *Per contra* a company taking over a going concern may find the outstanding debts realise considerably more than the amount that has been paid for them. The excess, however, would not be available for distribution, and cannot therefore be credited to Profit and Loss Account. In the Balance Sheet one of two courses may be pursued, either the book debts may be shown at the amount actually paid for them, notwithstanding the fact that this is known to be less than their true value, or a "fictitious" account may be included upon the liabilities' side under the heading of "suspense account" or "reserve." The latter becomes the only possible course to pursue when the book debts are actually turned into cash, as, although the under-valuation of book debts might be justified, it is clear that the cash in hand must be stated at its correct amount.

The above instances are by no means exhaustive, but they will suffice to show that the principles of double entry book-keeping occasionally, and indeed frequently require that the whole of the facts relating to the position of an undertaking's affairs should not be disclosed in its Balance Sheet. The general principle to be evolved from this is that additions to assets, or deductions from liabilities which represent profits not divisible, may be not improperly dealt with upon the Balance Sheet by ignoring the increase in the value of the assets, and by raising a reserve or suspense account equal to the amount of the reduced liability; while, *per contra*, losses that need not be made good before profits are applied in the payment of dividend may, if they arise out of a shrinkage in the value of assets, be ignored, and if they arise from an expected increase in the amount of liabilities, be compensated by the creation of a suspense account with a debit balance of equal amount. It will thus be seen that a Balance Sheet may sometimes omit facts, and at other times mis-state the net realisable value of assets. It need hardly be added that in each case it becomes the duty of the auditor, before passing the various items, to satisfy himself that the mode of treatment employed is under the circumstances a proper one.

This appears to be a convenient moment to draw attention to the principles underlying the double-account system that is usual in connection with such undertakings as railways, gas companies, water companies, and the like. Under this system a special account is shown of the capital receipts of the undertaking (that is to say, of the moneys raised by the issue of shares, stock, and debentures) on the one hand, and upon the other of the expenditure thereout upon the permanent assets of the undertaking. This account is upon a cash basis, the balance showing the excess of receipts over payments (or working capital) or, occasionally, the excess of payments over receipts (or deficiency of working capital). The expenditure side of the account is permanently maintained at actual cost, and this portion of the accounts is thus a statement of absolute fact, capable of actual verification and certification. In the general Balance Sheet under this system are included the floating assets and liabilities, the balance of the capital account (*i.e.* working capital or deficiency thereof), the balance of the revenue

account (*i.e.* profits earned by carrying on the undertaking which are distributable, but have not been distributed), and such reserve accounts as may exist. These reserve accounts may take the form of reserve funds, either special or general (*i.e.* actual profits which, either for the time being or permanently, are retained in hand to meet contingencies), or reserves that have been raised by charging against revenue such sums as may have been thought necessary to provide for losses that have either not been realised, or have not been made good. Under this latter heading comes such provision as it may have been thought desirable to make for depreciation or renewals.

The general principle upon which the double-account system is worked is to charge all repairs and renewals of "fixed" assets against revenue; and if such repairs were so extensive as to at all times keep the fixed assets in a condition equal to new, it is obvious that no reserve for depreciation or for renewal would be necessary in addition. In practice, however, it is frequently impossible, or undesirable, that the renewals should be made with such promptness, as it is often more economical to wait until more wear or depreciation has taken place before making good the waste that has occurred. To avoid over-stating the trading profits in the meantime it becomes necessary to provide to some extent for the outlay upon repairs and renewals that will become necessary in the future, and so the difference between the double-account system and the ordinary single-account system is one of form rather than of principle.

It will be seen that upon the whole a Balance Sheet prepared upon the double-account system is clearer than one prepared upon the single-account system, in that the original cost price of all the fixed assets is clearly shown, and also such reserves as may have been made are equally explicitly indicated. Even under the double-account system, however, the whole facts of the case would not be disclosed, for the fixed assets being permanently maintained at cost it becomes impossible to show in the accounts such appreciation of value as may have occurred. At the same time but little would be gained by showing such an appreciation of value, inasmuch as it is an essential part of the definition of a fixed asset, that it is one that it is proposed to retain in hand, and not one which is intended to be realised when a favourable opportunity offers. Consequently, even if an increase in value has been experienced, it is one which will not eventually result in a profit accruing to the undertaking, and is therefore a matter which may without impropriety be ignored in the accounts. At the same time it constitutes a secret reserve, in that it increases the financial resources of the undertaking, by improving its credit while alive, and adding to the estate divisible among parties interested in the event of the concern being wound up.

Passing on to the question of depreciation, it is important to remember that while the Cash Account is the basis upon which all accounts are framed, and that the truth of every statement of accounts may be to some extent tested by its agreement with the record of cash receipts and payments, yet in the case of a going concern—that is to say, of an undertaking which is as yet uncompleted—other matters must be brought into account, although they relate to transactions which do not involve the receipt or payment of money.

Dealing first of all with first principles, it may be stated that supposing certain articles are manufactured by the aid of a machine which will make say 1000 such articles and then be worn out, then the difference between the price for which the worn-out machine can be sold and the cost of buying

a new machine (*i.e.* the cost of renewing worn-out machinery), is part of the cost of manufacturing those 1000 articles. Equally one-thousandth part of that cost is a part of the cost of manufacturing each one of the articles, although no expenditure by way of cash may become necessary until the whole 1000 have been made. In practice, however, the provision for depreciation is complicated by the fact that it is impossible to say accurately in advance how many articles it will be possible to make. Many factors enter into this consideration. In the first place, machinery constantly running (so that such minor repairs as may be necessary from time to time cannot be conveniently executed in the most thorough manner possible) will wear out more quickly; on the other hand, if the exigencies of business require the machinery to lie idle at times, the number of articles that it will be able to make before it is worn out will probably be fewer than might otherwise have been the case, as although repairs can then be executed at leisure in a thorough manner, all machinery deteriorates by remaining unused. An even more important factor in this question of depreciation is the possibility that before a machine is worn out better types of machinery may have been introduced, so that in order to keep abreast with the times it may be necessary to part with the old machine and buy a more modern one, while it is still capable of performing its work in a fairly satisfactory manner.

For these reasons the actual provision that must be made for depreciation can never be absolutely ascertained in advance, and it is necessary, therefore, to provide an estimated sum such as experience may have shown to be reasonable in the past. Moreover, it is not as a rule practicable to provide for depreciation in proportion to the number of articles that may have been made in any given period. As has already been pointed out, the number of articles manufactured is not the sole factor that enters into the problem, while in many cases it would be inconvenient to keep an accurate account of the number of such articles so as to provide an apportionment upon this basis, even if it were the correct one. The usual custom, therefore, is to estimate the number of years during which the machine will be of use for the purpose for which it was intended, to estimate its saleable value at the end of that term, and to write off the difference between the cost price and the residual value during the period. That difference may be either written off by equal instalments periodically, or by a fixed percentage upon the decreasing balances that will be sufficient to write off the required amount in the time. It will be obvious, however, that there is a marked difference between these two methods. For example, supposing a machine costs £1000, and it is estimated that it will last twelve years, and then be worth £100; then depreciation at the rate of 7½ per cent per annum on the original cost (or £75) for each year will be sufficient; if, on the other hand, depreciation be provided at a fixed percentage upon the balance standing to the debit of the account at the beginning of each year, the rate would have to be 17½ per cent (or £175 in the first year, gradually reducing to £21 odd in the twelfth). It depends upon circumstances which mode of depreciation is the more desirable, but as a rule the last named will be the fairer, because (1) the earning capacity of a new machine is almost invariably greater than that of one that is getting worn out, so that the charges against the first year's profits ought in fairness to be heavier than the charge against the profits in later years; while (2) the cost of repairs during the later years will naturally be heavier, thus to some extent equalising the apparently uneven charges against each year's profits.

The precise method of providing for depreciation is, however, a matter

that rests with those responsible for the management of the undertaking. What the auditor is concerned with is to see that due provision has been made for depreciation, along with all other working expenses, before arriving at profits from the carrying on of the business or undertaking.

Similarly with regard to leases. Any premium paid for a lease is in the nature of a single payment in advance, representing the capitalised value of the amount of annual rent saved by acquiring the lease. In order to accurately arrive at the profits earned during each year (or other period), revenue account should be debited with the amount of rent so compounded for by payment in advance, and credited with interest (at whatever rate may be thought fair), upon the reducing balance standing from time to time to the debit of Leases Account.

But, although for the reasons stated there are many points in connection with the Balance Sheet which must invariably represent expressions of opinion rather than statements of fact, it must not be forgotten that there still remain many points of fact in connection with every Balance Sheet which it is the duty of the auditor to carefully verify. So far as the assets are concerned, the auditor should see that they are actually in existence, and in the ownership and custody of the undertaking whose accounts are being audited, or are (under proper circumstances) in the custody of others who hold them on behalf of, and to the order of, that undertaking.

Fixed assets, it has already been pointed out, may not improperly be valued at cost, provided reasonable provision is made for depreciation in the case of wasting properties, such as leaseholds, plant, machinery, etc.

Book debts should be ascertained to be actually due under such circumstances that there is every reasonable probability that they will realise the amount at which they are valued within a reasonable period of time. To some extent this is, of course, a matter of opinion, more especially so far as regards the due provision for bad and doubtful debts; but although the primary responsibility for the valuation rests with those whose duty it is to prepare the accounts, it is the duty of the auditor to take all reasonable steps to satisfy himself that the valuation is both fair and reasonable. These same remarks apply to stock-in-trade, the valuation of which is perhaps even more difficult.

With regard to investments, the auditor must verify their existence at the date of the Balance Sheet, and in particular should be careful to see that they are all produced, or accounted for, to him simultaneously, as otherwise some may have been lodged as security for undisclosed liabilities, and only produced after others that have already been examined have been lodged as security in their stead. It is at least equally important that all cash balances should be similarly verified simultaneously. That is to say, if there are several balances of cash in hand, they must not only be produced and counted all at the same time, but the bank balances must also be verified then, so as to avoid the risk of a deficiency being made good by "ringing the changes" successively upon different accounts.

Upon the liabilities' side steps must be taken to as far as possible see that the whole of the indebtedness of the undertaking is included in the books, and in this connection it is well to bear in mind the words of Lord Davey, "that the auditor should have all the suspicions that the books suggest, and make all the inferences to which what he finds in the books would lead him." Any entries that suggest the existence of a disputed liability, a debt accruing due, a pending action, or a liability under a contract in progress, should therefore receive careful attention, even although these

entries appear not in the books of account, but in a statistical book, such as the Minute Book of a company.

With regard to the statement of capital in the Balance Sheet the auditor's duties are comparatively simple, in that it is merely necessary for him to see that the capital has been properly issued within the powers of the undertaking, and that the total standing to credit has been actually received, either in cash or value under some properly registered contract.

With regard to revenue balances, he should see that nothing is included under this heading which is not properly distributable by way of dividend, and all reserves, reserve funds, or suspense accounts, should be so stated that there may be no misapprehension as to their precise nature.

Passing on to the liabilities of auditors, we come to a question upon which a considerable amount of uncertainty exists, as the legal decisions that have so far been given do not clearly enunciate any very definite principles. In the first place, it may be pointed out that the relation between auditor and client is essentially a matter of contract, and that, consequently, an auditor may be held liable by an action at law for any damages that can be shown to have been caused by his failure to carry out his side of the bargain. A short consideration of the various reported cases will be convenient before attempting to draw any general conclusions.

In the case of the *Leeds Estate Building and Investment Society, Ltd.*, v. *Shepherd* (which was decided in the Chancery Division in 1887, 36 Ch. D. 787), it was held that it was the duty of an auditor not to confine himself merely to the task of ascertaining the arithmetical accuracy of the Balance Sheet, but to see that it was a true and accurate representation of the company's affairs. In this particular case it was clear that the auditor had failed in his duties, in that he had made no attempt to ascertain the substantial accuracy of the Balance Sheets set forth from time to time. The direct result of his negligence was that dividends and commissions were improperly paid out of the capital moneys of the undertaking, and as a result he was held liable, jointly and severally with the directors, to reimburse to the company the amount so improperly paid out; such liability being, however, limited by the Statute of Limitations to a period of six years from the commencement of the action.

In the case of *Martin* v. *Isitt* (a jury case heard in the Court of King's Bench in 1898), an action was brought against a firm of auditors for negligence in not checking the cash book and the bank pass-book, whereby a clerk was enabled undiscovered to embezzle certain moneys the property of the plaintiffs. It was alleged in this case that there had been an undertaking that the books should be checked monthly, and it was further alleged that it was owing to the defendants allowing their work to get into arrear that the frauds remained undetected. On behalf of the defendants it was stated, that it was through the negligence of the plaintiffs in allowing their clerks to get behind with their work that the delay in the audit—which itself was unavoidable under the circumstances—had occurred. The case was settled in Court, and therefore affords no definite guidance upon the subject at issue.

Of more importance is the decision of the Irish Court of Appeal in the case of the *Irish Woollen Company, Ltd.*, v. *Tyson and others*, decided early in 1900. Here it was sought to make the auditor liable for having failed to discover the fraudulent manipulation of the books which had been committed by certain officers of the company who had charge of the accounts. These falsifications came under three headings, namely:—

(1) The overstating of the value of the stock-in-trade;
(2) The overstating of the value of the book debts;
(3) The understating of the company's liabilities to its trade creditors.

With regard to the stock-in-trade it was held (following the *Kingston Cotton Mills* case, which will be dealt with shortly), that the auditor was not responsible, and it was also held that no negligence had been proved against him in failing to discover that an insufficient provision had been made for losses arising from bad and doubtful debts. With regard to the understatement of the liability to trade creditors, however, the Court held that a reasonably careful examination of the books would have disclosed sufficient irregularities to put the auditor upon a full inquiry, and it therefore held that in omitting to discover these inaccuracies he had failed to use reasonable diligence and skill, and was accordingly liable in damages for such losses as had been sustained. As to the exact amount of the damages, it was held that that would depend upon the losses the plaintiffs had suffered, taking all the circumstances of the case into consideration. The Court thought that it had not before it all these circumstances, and that in consequence it would be premature at that stage to assess the actual amount.

The above are practically all the decisions bearing upon the subject of an auditor's liabilities, so far as those liabilities are based upon the ordinary doctrine of contract, but in connection with the liabilities of auditors special legislation is provided by the Companies (Winding-up) Act, 1890. Section 10 of this Act reads as follows:—

(1) Where in the course of the winding-up of a company under the Companies Acts, it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of the Official Receiver, or the liquidator of the company, or of any creditor or contributory of the company, examine into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just.

(2) The provisions of this section shall apply in the winding-up of any company under the Companies Act, whether the same is being wound up by or subject to the supervision of the Court, or is being wound up voluntarily, and whether the winding-up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally responsible.

It can hardly be said that the above enactment increases the legal responsibilities of auditors, but it materially simplifies the task of bringing those liabilities home, and shortens the procedure necessary for so doing. As a consequence, procedure by way of a misfeasance summons is the more usual course to adopt when a claim is made against an auditor by, or on behalf of a company that is in liquidation. For this reason the decisions under this procedure are more numerous and more important than those by way of action. The earliest case is that *in re The London and General Bank, Ltd.*, 1895, 2 Ch. 673, decided by the Court of Appeal in 1895. The hearing of the case occupied a considerable time, and is one of no little intricacy, but the substance of the claim against the auditor was that two Balance Sheets which had been placed before the shareholders were in

fact misleading, and that the auditor in his certificate had not—or at least had not sufficiently—drawn attention to their misleading nature. Put shortly, it may be stated that for some little time before its failure the bank had got into difficulties by locking up its assets in more or less doubtful loans, which eventually realised far less than the sum originally advanced. The only hint of this state of affairs that was given by the auditor in his report to the shareholders was that the assets were "subject to realisation," and it was held that this qualification, whatever it might mean, at all events did not sufficiently draw the attention of the shareholders to there being a probability of a considerable loss being incurred when realisation took place. There does not, however, appear to have been any substantial difference of opinion as to the actual facts, but it is upon record that the auditors were fully alive to the seriousness of the position of affairs, and that they had reported privately to the directors in such terms as left no doubt as to their knowledge of the real facts. The decision of Lord Justice Lindley in this case is one of considerable importance, more especially that part which deals with the duties of auditors, which was as follows (p. 682):—

It is no part of an auditor's duty to give advice either to directors or shareholders as to what they ought to do. An auditor has nothing to do with the prudence or imprudence of making loans with or without security. It is nothing to him whether the business of the company is being conducted prudently or imprudently, profitably or unprofitably; it is nothing to him whether dividends are properly or improperly declared, provided he discharges his own duty to the shareholders. His business is to ascertain and state the true financial position of the company at the time of the audit, and his duty is confined to that. But then comes the question: How is he to ascertain such position? The answer is: By examining the books of the company. But he does not discharge his duty by doing this without inquiry, and without taking any trouble to see that the books of the company themselves show the company's true position. He must take reasonable care to ascertain that they do. Unless he does this his duty will be worse than a farce. Assuming the books to be so kept as to show the true position of the company, the auditor has to frame a Balance Sheet showing that position according to the books, and to certify that the Balance Sheet presented is correct in that sense. But his first duty is to examine the books, not merely for the purpose of ascertaining what they do show, but also for the purpose of satisfying himself that they show the true financial position of the company. That is quite in accordance with the decision of Mr. Justice Stirling in *The Leeds Estate Company* v. *Shepherd*, in 36 Chancery Division, p. 802. An auditor, however, is not bound to do more than exercise reasonable care and skill in making inquiries and investigations. He is not an insurer; he does not guarantee that the books do correctly show the true position of the company's affairs; he does not guarantee that his Balance Sheet is accurate according to the books of the company. If he did he would be responsible for an error on his part, even if he were himself deceived, without any want of reasonable care on his part—say, by the fraudulent concealment of a book from him. His obligation is not so onerous as this.

Such I take to be the duty of the auditor; he must be honest—that is, he must not certify what he does not believe to be true, and he must take reasonable care and skill before he believes that what he certifies is true.

What is reasonable care in any particular case must depend upon the circumstances of that case. Where there is nothing to excite suspicion very little inquiry will be reasonable and sufficient; and in practice, I believe, business men select a few cases haphazard, see that they are right, and assume that others like them are correct also. Where suspicion is aroused more care is obviously necessary, but still an auditor is not bound to exercise more than reasonable care and skill even in a case of suspicion; and he is perfectly justified in acting on the opinion of an expert where special knowledge is required.

Mr. Theobald's evidence satisfies me that he took the same view as myself of his duty in investigating the company's books and preparing his Balance Sheet. He did not content himself with making his Balance Sheet from the

books without troubling himself about the truth of what they showed. He checked the cash, examined vouchers for payments, saw that the bills and securities entered in the books were correct, took reasonable care to ascertain their value, and in one case obtained a solicitor's opinion on the validity of an equitable charge. I see no trace whatever of any failure by him in the performance of this part of his duty. It is satisfactory to find that the legal standard of duty is not too high for business purposes, and is recognised as correct by business men.

The Balance Sheet and certificate of February 1892—that is, for the year 1891—was accompanied by a report to the directors of the bank. Taking the Balance Sheet, the certificate, and report together, Mr. Theobald stated to the directors the true financial position of the bank, and if this report had been laid before the shareholders Mr. Theobald would have completely discharged his duty to them. Unfortunately, however, this report was not laid before the shareholders, and it becomes necessary to consider the legal consequences to Mr Theobald of this circumstance.

A person whose duty it is to convey information to others does not discharge that duty by simply giving them so much information as is calculated to induce them, or some of them, to ask for more. Information and means of information are by no means equivalent terms. Still, there may be circumstances under which information given in the shape of a printed document circulated amongst a large body of shareholders would by its consequent publicity be very injurious to their interests, and in such a case I am not prepared to say that an auditor would fail to discharge his duty, if instead of publishing his report in such a way as to ensure publicity, he made a confidential report to the shareholders, and invited their attention to it, and told them where they could see it. The auditor is to make a report to the shareholders, but the mode of doing so and the form of the report are not prescribed. If, therefore, Mr. Theobald had laid before the shareholders the Balance Sheet and the Profit and Loss Account, accompanied by a certificate in the form in which he had prepared it, he would perhaps have done enough under the peculiar circumstances of the case. I feel, however, the great danger of acting on such a principle, and in order not to be misunderstood, I will add that an auditor who gives shareholders means of information instead of information in respect of a company's financial position does so at his peril, and runs the very serious risk of being held judicially to have failed to discharge his duty.

It will be seen that for practical purposes the respondents in this case were liable, not because they failed to ascertain the actual position of affairs, but because they failed to report it to the shareholders when it had been ascertained. In this connection it is well to bear in mind that when auditors were obliged to state all that they wished the shareholders to know at the foot of the Balance Sheet, the question as to exactly what should be stated might easily be a matter of the gravest responsibility and delicacy. Since the passing of the Companies Act, 1900, however, no such difficulties need arise, inasmuch as the auditor's report to the shareholders is now made in a manner that effectually avoids the necessity of its being made public to outsiders.

The next case of any importance is that *in re The Kingston Cotton Mills Company, Ltd.*, 1896, 1 Ch. 331, 2 Ch. 279. In this case it was decided by Mr. Justice Vaughan Williams that an auditor was not responsible for the value attached in a company's Balance Sheet to such fixed assets as lands and buildings, even although that value might be greatly in excess of any price that could be realised. His lordship held, however, that an auditor was not justified in relying upon the certificate of the managing director as to the amount and value of the stock-in-trade, and that in so doing he was guilty of negligence, even although he definitely stated to the shareholders the source of information. This latter decision with regard to the stock-in-trade was, however, overruled by the Court of Appeal in 1896. Lord-Justice Lopes in the course of his judgment made (p. 288) some very interesting remarks upon the duties of auditors:—

"It is," his lordship said, "the duty of an auditor to bring to bear on the work he has to perform that skill, care, and caution which a reasonably competent, careful

and cautious auditor would use. What is reasonable skill, care, and caution must depend on the particular circumstances of each case. An auditor is not bound to be a detective, or, as was said, to approach his work with suspicion, or with a foregone conclusion that there is something wrong. He is a watch dog, but not a bloodhound. He is justified in believing tried servants of the company in whom confidence is placed by the company. He is entitled to assume that they are honest, and to rely upon their representations provided he takes reasonable care. If there is anything calculated to excite suspicion he should probe it to the bottom, but in the absence of anything of that kind he is only bound to be reasonably cautious and careful. His lordship then referred to the circumstances which led to the auditors being deceived, and came to the conclusion that they were not wanting in skill, care, or caution in accepting the figures of the manager; and he concluded as follows: The duties of auditors must not be rendered too onerous. Their work is responsible and laborious, and the remuneration moderate. I should be sorry to see the liability of auditors extended any farther than *in re The London and General Bank*. Indeed, I only assented to that decision on account of the inconsistency of the statement made to the directors with the Balance Sheet certified by the auditors and presented to the shareholders. This satisfied my mind that the auditors deliberately concealed that from the shareholders which they had communicated to the directors. It would be difficult to say this was not a breach of duty. Auditors must not be made liable for not tracking out ingenious and carefully laid schemes of fraud, when there is nothing to arouse their suspicion, and when those frauds are perpetrated by tried servants of the company, and are undetected for years by the directors. So to hold would make the position of an auditor intolerable.

In connection with this case it is important to bear in mind that although an auditor is justified in relying upon the trusted officers of a company in questions as to the value of assets, he is, of course, only justified in so doing so long as he himself honestly believes the accounts to be correct. If for any reason the auditor's suspicions are aroused, or even if he be of opinion that the person making a valuation is incompetent to do so, then clearly he cannot rely upon their figures, because he cannot, while adopting them, honestly state that in his opinion the Balance Sheet properly discloses the true position of affairs.

Of purely technical interest is the decision given by the Court of Appeal in 1897 in the case of *The Western Counties Steam Bakeries and Milling Company, Ltd.*, 1897, 1 Ch. 617, in which it was held that when no proper appointment of auditors had been made in due compliance with the regulations of the undertaking, then the persons who had acted as auditors, and professed to be the auditors of the company, could not be held to be "officers" of the company within the meaning of section 10 of the Companies (Winding-up) Act, 1890, and that, consequently, the misfeasance procedure could not be employed against them.

Another decision of minor interest is that delivered by Mr. Justice Cozens-Hardy in 1900 *in re Joseph Hargreaves, Ltd.*, in which it was held that when the auditor had refused to pass the accounts, he could not be held responsible for any actions of the directors, such as the improper payment of dividends, etc. and that it was no part of the duty of the auditor to take special steps to see that the shareholders were fully advised of the position. The chief interest of this decision lies in the fact that it definitely limits the responsibility of an auditor to his certificate and report, leaving to the directors the sole responsibility of seeing that the shareholders are acquainted with the contents of these documents.

The only decision of the House of Lords in connection with misfeasance cases is that delivered in August 1901 in *The National Bank of Wales* case (*Dovey* v. *Cory*) 1901, A. C. 477. The responsibilities of auditors did not arise here, as the proceedings were only taken against one of the directors of the company; but it seems desirable to briefly mention the case, as the report

of the judgment appears to indicate that the members of the House of Lords took a somewhat less strict view of the responsibilities of auditors than the Courts below. That is to say, the Supreme Court appears to have a better appreciation of the difficulties in the way of any one who tries, however honestly, to produce true accounts of a going concern, and to be disposed to allow all reasonable latitude for honest mistakes.

With regard to the criminal liability of auditors, there is only one case in which the auditors of an undertaking have been held criminally responsible for a false certificate. The case referred to is the trial of the auditors and certain other officials of Dumbell's Banking Company, Ltd., which took place in the Isle of Man in 1900. This case was tried under the Manx Criminal Code of 1872; but almost identical provisions are to be found in the Larceny Act of 1862, rendering it a criminal offence to join in the issue of false Balance Sheets, knowing them to be false, and with the intent to deceive.

It may be added that as the Companies (Winding-up) Act, 1890, simplified the procedure against auditors in the case of a company that had gone into liquidation, so the Companies Act, 1900, has, to some extent, simplified the institution of criminal proceedings against persons guilty of fraudulent mis-statements of accounts. This is provided for in section 28, which reads as follows:—

> If any person in any return, report, certificate, Balance Sheet, or other document, required by or for the purposes of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable, on conviction on indictment, to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour; and in either case to a fine in lieu of, or in addition to such imprisonment as aforesaid: Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

It may be mentioned that the chief difference between the above section and section 84 of the Larceny Act, 1862, is that the words, "with intent to deceive" have been omitted. It is obvious, however, that no one would ever be convicted of a criminal offence in respect of an act committed inadvertently. The words in section 28, "knowing it to be false," are sufficient to define the obvious meaning of the Legislature, that only persons having a criminal intention should be liable to conviction. It may be mentioned further that section 28 provides, for the first time, for a fine being inflicted in addition to a sentence of imprisonment.

So far, for the sake of convenience, our comments have been chiefly confined to the audit of a company's accounts. It need hardly be stated, however, that the duties of auditors are not similarly limited. The accounts of private persons and firms may be—and frequently are—audited by some one appointed for that purpose other than the proprietors, and the duties of the auditors under these circumstances have now to be considered.

Taking, first of all, the case of the auditor of an individual, it may be said that the relation of the parties *inter se* is primarily one of contract, although in the absence of a special contract custom would doubtless be called upon to define the relative positions of the parties. The auditor to a company acts on behalf of shareholders who are not themselves allowed access to the books and accounts; but the private client has, of course, access to his own books and accounts, and this, to some extent, modifies the nature of the position. Assuming a private client enters into an arrangement for a full audit of his accounts to be performed, he would, no doubt,

expect the work to be done with that same completeness that should characterise the audit of the accounts of a company; but there is this important difference, that whereas the auditor in his report might conveniently, and with propriety, refer his client to one or more of the books for further information upon any matter to which he wished to draw attention, such a course is not possible in the case of a company audit.

In practice, however, it very frequently happens that a special arrangement is entered into, under which, instead of a complete audit being performed, the client is prepared to assume the accuracy of a certain portion of the work, or to himself accept responsibility for its accuracy, leaving a residuum only for the auditor to perform. These "partial" audits, as they are called, may be undertaken for one of two objects, or for both, namely (*a*) to give the client the safeguard of an audit in respect of those matters which, owing to lack of time or lack of skill, he cannot investigate on his own behalf; (*b*) in order to save expense, the client looking upon the audit as a sort of insurance against fraud, while being at the same time prepared to himself underwrite a portion of the risk. Wherever a partial audit is performed, it is of the greatest importance in the interests of both auditor and client that the exact extent of the audit should be very clearly defined, and that the client should be made to fully understand the limitations of the audit and its weaknesses. From the auditor's point of view it may be added that where only a partial audit has been performed, it is desirable that no formal certificate should be appended to the accounts, or at all events, if any certificate is given that the exact extent and limitations of the audit be also appended. The importance of this precaution lies in the fact that certified accounts may be, and frequently are, shown to third parties, and if such third parties were misled thereby, and in consequence suffered loss, the auditor would probably be responsible in damages.

Passing on to the audit of the accounts of private firms, the various considerations enumerated in connection with the audit of a private individual's accounts apply practically in their entirety. It may be added, however, that in such cases it is important that each client should clearly understand the position of affairs, and that the auditor should conduct himself impartially, looking upon each partner equally as his client. The regulations of the partnership, in so far as they affect the accounts, must, of course, be observed, or if they be infringed, the attention of each partner should be clearly drawn to the fact. In the case of private audits it is a convenient practice to report at some length on the accounts and the general position of affairs which they disclose, and any special points which it may be necessary to bring to the notice of the partners (or any of them), may be conveniently included in such report, and thus placed definitely on record.

In the case of an audit conducted on behalf of a sleeping partner, or on behalf of a creditor, the position becomes more analogous to that of a company audit, in that the persons for whose benefit the examination is being conducted have not access to the books and accounts themselves. It is especially important, therefore, that care should be taken to see that the accounts are so framed as to give a true and comprehensive view of the position as a whole, and that all matters that may tend to modify the conclusion which the accounts themselves would suggest be especially referred to in the report.

In connection with reports generally it is desirable to take into consideration the understanding of those for whose benefit they are being

prepared. A report intended solely for business men well versed in matters of account need not, in the nature of things, be nearly so explicit or so circumstantial as one intended for those whose knowledge of these matters is more restricted. In the latter case every effort should be made to keep the wording of the report not merely clear and unambiguous, but also so simple that its purport may be readily intelligible to all. The writer is in favour of such reports pointing out the nature of the examination that has been made; more particularly if only a partial audit has been conducted, and explaining at such length as may be thought desirable the present position of the undertaking and its progress since the date of the last accounts. This latter may be thought to form no part of an auditor's duty as such, but it is of especial value to those who are not in the habit of being called upon to interpret accounts, and will generally be found to be duly appreciated by the client.

Having now dealt at some length with the nature of an auditor's duties and responsibilities, the best method of discharging these may be conveniently and profitably discussed. In the first place, it may be pointed out that, while in the case of comparatively small undertakings it may be practicable to actually check every entry in the books, in the case of larger businesses where the transactions become very numerous, this would only be possible at a cost altogether out of proportion to the results to be achieved, and at the expenditure of an amount of time that would very seriously delay the completion of the audit, and so militate against its utility. In most undertakings, therefore, some abbreviated method of verifying the entries becomes extremely important. These abbreviations must not, however, be confused with a partial audit, in that wherever a full certification of the accounts is required, no abbreviation of the work can take place which, in the opinion of the auditor, is likely to, in the least, impair its efficiency. It is probable that the skill and experience of an auditor is more evinced in his selection of what work to omit, than in the manner in which he actually performs the work that he decides to undertake. This matter can, of course, only be discussed upon general lines, in that everything depends upon the circumstances of each individual case, but the underlying principles that should guide the auditor in his selection may be usefully indicated. It has been laid down by the Courts that whenever an auditor's suspicions are aroused, it is imperative that he should make a full inquiry into the whole matter, and it therefore follows that if an auditor decides to omit any portion of his work, he must first be satisfied that the items which he does not check are correct. An auditor is not justified in assuming that anything is correct without a reasonable inquiry; therefore, at least, *some* steps must be taken to test the accuracy of each section of the accounts before the auditor can safely decide that it is unnecessary for him to go into the matter in full detail. As to how he is to satisfy himself the usual practice is to, as far as possible, test the accuracy of the transactions in totals, and by the complete verification of a few items to further satisfy himself that not merely is the total correct, but that also the individual items of which it is composed are equally accurate. The employment of self-balancing ledgers materially simplifies the work of the auditor, in that it enables him to test the accuracy in totals of the trade debtors and trade creditors without calling back the whole of the postings into the sold and bought ledgers. It would not, however, be safe to assume the entire accuracy of these ledgers, merely because they happened to "balance." If the work is not very heavy the extraction of the balances from the various ledger accounts should be checked and agreed with the totals shown

by the adjustment accounts, and should this be impossible, a few of the ledgers, selected at random, should be thoroughly tested in this manner. One or more should be further verified by the complete checking of that side which contains the most important, but at the same time, the fewest items, *i.e.* the credit side of the sold ledgers and the debit side of the bought ledgers, and if the work is not very heavy it is convenient that this side of all the ledgers should be checked in full detail. With regard to the sold ledger balances it is important for the auditor to satisfy himself not merely that they agree with the books, but also that they fairly represent good assets to the extent to which they are so treated in the Balance Sheet. It further devolves upon him to satisfy himself as to the sufficiency of the provision made for cash discounts, and for bad and doubtful debts. The provision for discounts does not, as a rule, cause any difficulty; but the same can hardly be said of the provision for bad and doubtful debts, which is a matter that can usually only be definitely determined by those more intimately versed in the transactions of the undertaking than an auditor, with his occasional visits, can possibly be. At the same time it devolves upon the auditor to satisfy himself that a reasonable provision has been made, and this is not, as a rule, so difficult a matter as might be supposed. There is, of course, in every business the possibility that a debtor, who has hitherto regularly discharged his accounts, may suddenly fail; but experience has shown that these sudden failures account for but a comparatively small part of the loss annually experienced by bad debts. If attention be given to overdue accounts, it is usually possible to obtain a fair insight into the general position of affairs. The ledger balances should, therefore, be scrutinised with this end in view, special attention being paid to those accounts which are not regularly discharged, to those where renewals of bills are frequent, and especially to those where the outstanding balance is large in proportion to the volume of business done. So long as the turnover upon an account is large, and the balance outstanding does not increase, the probability is that the debt is a good one; but where the dealings are few and far between, and are trifling compared to the outstanding balance, the presumption lies the other way. Debts that bear interest may usually be regarded as good so long as the interest is punctually paid, but the utmost circumspection becomes necessary if it be found that the interest is falling into arrear.

The above hints do not profess to be exhaustive, but they indicate the lines upon which the auditor may usefully proceed. In very large undertakings it may not be practicable for him to scrutinise the whole of the contents of a schedule of debtors upon these lines, but if the balances of a few ledgers be taken at random and pass the test, it may not unreasonably be assumed that an equally conservative estimate has been made with regard to the remainder.

Passing on to outstanding creditors, these will mostly appear in the bought ledgers, and unless very numerous, should be verified in detail. If numerous, however, they may be tested in the manner already described in connection with debtors. A limited number should be compared with the statements rendered by the creditors themselves, with a view to seeing that no invoices have been omitted, and every practicable inquiry should be made with a view to seeing that the invoices for all goods taken into stock have been duly entered up.

Creditors, other than the ordinary trade creditors, will require special consideration, as it is here, if anywhere, that there is most likely to be an omission. The best way is to go through every nominal account

seriatim, and see if any liability appears to be outstanding in respect thereof. Thus "rent account" suggests an inquiry as to what rent is outstanding and what is accruing due; "wages account" suggests an inquiry as to what wages have been earned since the last pay-day, and so on. Statistical books, such as order books, contract books, bill books, claim books, minute books, etc., should be searched for liabilities—contingent or otherwise—that may have been altogether omitted from the books of account. If a diligent perusal of the existing books would have enabled the auditor to discover such an omission, it may (following the *dictum* of Lord Davey) be said that he should have discovered it.

With regard to stock-in-trade, it is well not to place too much reliance upon the decision in the *Kingston Cotton Mills* case (1896, 2 Ch. 279). It is true that the Court of Appeal then decided that the auditor had not been guilty of negligence in passing the managing director's valuation, which had previously been adopted by the board of directors, but this does not amount to the same thing as saying that the auditor need make no inquiry into the accuracy of the valuation of stock-in-trade. An auditor is not a skilled valuer, and he does not profess to either "take" the stock or to actually check it in the way that a trade expert might; but he does profess to check the accounts, and to be an expert of accounts; in so far, therefore, as the valuation of the stock can be tested by an inspection and comparison of the accounts, it becomes his duty to so test it. It will depend upon the nature of the business how far this testing will be practicable or useful—to *some* extent it is always possible. In the first instance, the percentage of gross profit earned during the period under review should be compared with that earned during other periods by the same undertaking, and (where possible) with that earned by other similar undertakings. Every discrepancy should be capable of explanation, and an explanation should be sought. Secondly, stock accounts (where kept) will help greatly to verify the inventory at stocktaking, while cost accounts (where kept) will help to verify the valuation. In all cases, moreover, it is important to bear in mind that it is necessary for the auditor to arrive at an intelligent opinion upon the matters under consideration, and not to pass the accounts unless and until he feels satisfied that they are correct. The auditor must in all cases honestly arrive at the conclusion that the accounts that he passes fully and fairly disclose the position of affairs: if he feels any doubt upon the point, it becomes his bounden duty to make the utmost possible inquiry into the facts, and to report to the shareholders any lurking doubt that he may still feel after every practicable channel of inquiry has been exhausted.

As to the capital receipts of an undertaking, it has already been pointed out that the investigation of this practically resolves itself into the checking of a cash account—a comparatively simple matter. Questions of law may arise, however, at times,—as, for instance, a question as to the validity of a commission paid on an issue of shares, or as to the proper disposal of a premium received upon an issue of shares. With regard to discounts, these were practically illegal prior to the passing of the Companies Act 1900. They may not be allowed (or may) under certain specified circumstances, and under no others; and it thus becomes important for the auditor to satisfy himself that the terms of the Act have been very strictly complied with before passing any payments by way of commission for placing or underwriting the capital of the company out of such capital or shares. As to the exact responsibility of the auditor upon this and kindred matters, of course it goes without saying that the auditor cannot be expected to have the knowledge of a legal expert, more especially as the law with regard to the

question is still in a somewhat uncertain state; but he will be required to use reasonable care, and to draw the attention of shareholders to anything unusual that has been done.

Passing on to the correct treatment of premiums, it was formerly usual to at all times credit these to reserve fund, as being profits, but not profits earned in the ordinary course of carrying on business. It would now appear, however, that the new Companies Act has imposed a more drastic mode of treatment. It has been decided by the Court of Appeal (in *Burrows* v. *Matabele Reefs and Estates, Co., Ltd.*, 1901, 2 Ch. 23) that the premium receivable upon the issue of a company's shares is as much a part of the capital of the company as the face-value of the issued shares itself. If that be really so, it follows that under no circumstances whatever must these premiums be distributed as dividend, and therefore that it is not correct to place them to the credit of the reserve fund, which is, of its nature, available for distribution at any time that may be thought fit. It would thus appear that premiums realised on the issue of shares should be credited to a special account that must be permanently upheld as a liability upon the Balance Sheets. This treatment can, however, hardly be imperative in the case of an issue of debentures. It is true that the case is hardly likely to arise, as it is certainly not usual to issue debentures at a higher price than that at which they will be redeemed; but irredeemable debenture stock might, of course, quite conceivably be issued at a premium. It is thought that this premium need not necessarily be capitalised in perpetuity.

It is probable that the most important duty of the auditor will in most cases be to arrive at a clear distinction between capital and revenue expenditure. The distinction, of course, is a most important one, for *prima facie* capital expenditure may be upheld as an asset, while revenue expenditure must be at once charged up against current profits. In practice, however, there are exceptions to both rules. Most classes of capital expenditure are only of comparatively permanent value, *i.e.* they may properly be capitalised for the time being, but must be written off gradually so as to provide for the gradual wastage of the assets that they represent. Such decisions as *Lee* v. *Neuchatel Asphalt Co., Ltd.* (Court of Appeal, 1889, 41 Ch. D. 1), *Verner* v. *General and Commercial Investment Trust, Ltd.* (Court of Appeal, 1894, 2 Ch. 268), *Wilmer* v. *M'Namara and Co., Ltd.* (Ch. Div. 1895, 2 Ch. 245), and *Cox* v. *Edinburgh and District Tramways Co., Ltd.* (Outer House, Court of Session, 1898, 6 S. L. T. 86), show that the Courts will not lightly intervene to require depreciation of assets to be made good, or unprofitable expenditure to be written off; but this shows little more than an indisposition on the part of the Courts to interfere with the manner in which business men conduct their own affairs, and must not be regarded as anything approaching the enunciation of a legal principle that depreciation is a negligible quantity. The more recent decision of the Court of Appeal *in re The Barrow Hæmatite Steel Company's* case, 1901, 2 Ch. 746, directly negatives this latter supposition. The Courts have—wisely, it is thought—decided to allow directors and shareholders the utmost possible latitude in the conduct of their own affairs, provided only that creditors are not defrauded thereby, and it would seem that auditors would be well advised to approach the matter with an equal breadth of view. The responsibility of formulating a financial policy rests with the directors of the undertaking, and not with the auditor. The latter should, therefore, guard against undue fussiness or interference; at the same time it is very especially his duty to see that all the facts and circumstances are placed before the shareholders.

As to revenue expenditure, that may properly be spread over a term of years; the question at issue is chiefly one of fact. If the whole of the benefit derivable from the expenditure has not yet been realised, a proportionate part of the expenditure may not unreasonably be carried forward as an asset; but such carrying forward should be regarded as something of an exceptional nature, and it should be capable of being justified in view of the known facts of the case.

This carrying forward of expenditure known to have been incurred is so important a matter that a few examples may not be out of place. Overpaid royalties (in colliery accounts, etc.) may be treated as an asset so long as there is a clear and reasonable expectation of their being redeemed out of subsequent workings. Renewals of machinery may be held over in part (*a*) if they increase the value of the machinery as a whole beyond its previous book value, or (*b*) if they have been necessitated by an unusual accident, in which case it is not fair that the whole of the loss should fall on one year; but not (*c*) because, owing to the insufficiency of previous repairs and renewals, it becomes at length imperative that an exceptionally heavy expenditure should at length be incurred to keep matters going at all. Advertising may be properly spread over a time, if special expenditure, beyond the normal amount, is being incurred for a limited period only, but only if the results appear to fully justify this somewhat exceptional course. It is safe to say that much of the expenditure upon advertising which is capitalised in practice is capitalised improperly. Preliminary expenses may fairly be spread over a term of years, because the benefit of such expenditure is certainly not solely experienced during the first year of the company's existence.

The ultimate test that should be invariably applied by the auditor is a full and careful scrutiny of the revenue account. It should fairly and fully record the incomings and outgoings for the period under review. In particular it should take credit for nothing that ensuing periods might more fairly claim as theirs, and it should avoid leaving later years to pay the bills that it has incurred. As has already been somewhat fully explained, this is a counsel of perfection that cannot always be strictly adhered to when preparing interim accounts of a going concern; but it indicates, shortly yet effectively, what has to be aimed at, and therefore what the auditor must ever bear in mind.

LAWRENCE R. DICKSEE.

Audit Office.—The department of the State, officially designated the Exchequer and Audit Department, which has charge of the audit and control of the Public Accounts. The office of Auditor of the Exchequer was established in 1314. In 1785 a special department was created for the audit of the Public Accounts. In 1867 the offices of the Comptroller-General of the Exchequer and of the Commissioners for Auditing the Public Accounts were formed into a single department.

Auditor of the Court of Session.—The taxing master in Scotland.

Augmentation.—In Scotland this is the term used for a process raised in the Teind (Tithe) Court by the minister of a parish against the titular and heritors, for the purpose of obtaining an increase to his stipend.

Autumn Drain.—The movement of coin in the autumn through the extra flow of capital into agriculture at that time of year, and

through the money spent by those in the country on their holidays. It is best seen in the statements showing the amount of coin held by the Bank of England during the period from the beginning of September to the middle of November as compared with the rest of the year. There is a corresponding influx during the months of May and June.

Average Due Date or Equated Time of Payment.

—By this is meant the date on which various sums falling due on different dates may be settled up as one transaction by the payment of the whole amount on that *particular day* which is called the average due date or equated time of payment. It may so happen that four sums of money are due on different dates such as those given below. One way of settling up would be to pay these amounts as they fell due. The other way is to settle up the whole amount on one day, which, in the following example, is the 30th April. Suppose the following sums of money to be due on the respective days mentioned:—

£500 on 15th March.	£800 on 16th May.
£600 on 14th April.	£200 on 7th August.

The above transactions could be settled up by paying the £2100 on 30th April.

The mode of finding the "average due date" is as follows:—

Fix upon one of the dates and multiply the various amounts by the number of days between this date and the dates upon which the sums fall due, divide the sum of these products by the sum of the amounts, and the result is the number of days between the date fixed and the average due date.

The working of the above example is as follows:—

Date.	Days from 15th March.	Sum.	Product.
March 15	0	£500	0
April 14	30	600	18,000
May 16	62	800	49,600
August 7	145	200	29,000
		£2100	96,600

$$\frac{96600}{2100} = 46.$$

Forty-six days after 15th March gives 30th April, this latter date being the average due date.

In order to prove that this is the correct date, interest may be calculated on the sums falling due prior to 30th April which should exactly equal the interest on sums due after 30th April, interest being calculated up to and from the 30th April, as follows:—

Sums Falling Due prior to 30th April.

Interest at 5 per cent on £500, from 15th March to 30th April .	£3	3	$0\frac{1}{4}$
„ „ £600, „ 14th April „ „ .	1	6	$3\frac{1}{2}$
	£4	9	$3\frac{3}{4}$

Sums Falling Due after 30th April.

Interest at 5 per cent on £800, from 30th April to 16th May .	£1	15	$0\frac{3}{4}$
„ „ £200, „ „ „ 7th August .	2	14	3
	£4	9	$3\frac{3}{4}$

To find the average due date of an account where there are both debit and credit items the following is the procedure usually adopted:—

Take the earliest date as the date to start from, and treat both sides of the account in the manner shown above. Divide the difference between the debit and credit products by the balance of the account, and the figure found will be the number of days *after* or *before* the first date in the account and the average due date according as the balance of the account falls on the side with the larger number of products or on the side with the smaller number of products.

Average (Maritime).—The custom that all parties interested in the safety of a ship at sea are liable to contribute their share of loss and expenses incurred for the common good.

Averages.—An *average* may be tentatively defined as a number or measurable quantity used to replace a group of numbers or measurable quantities for purposes of brevity or comparison. In a more extended sense the word includes any chosen numbers or quantities which can be used to describe a group in brief. There is no generally recognised distinction between averages and means.

The simplest and best-known average is that called the *arithmetic mean* or *simple average*. This is obtained by adding together the items whose average is required and dividing the total by the number of items. Thus, if $a_1, a_2, \ldots a_n$ are the items, $\frac{\Sigma_1^n a}{n}$ is their arithmetic mean.

The *geometric mean* of n items is obtained by multiplying them together and taking the nth root of the product. Thus $\sqrt[n]{a_1 . a_2 \ldots a_n}$ is the geometric mean of $a_1, a_2, \ldots a_n$. It is easily calculated by logarithms, for its logarithm $= \frac{1}{n} . \Sigma_1^n \log a$.

The *harmonic mean* of any number of items is the reciprocal of the arithmetic mean of the reciprocals of the items; thus $\frac{1}{\frac{1}{n} \cdot \Sigma_1^n \frac{1}{a}}$ is the harmonic mean of $a_1, a_2, \ldots a_n$.

It has been suggested that any function of n quantities is entitled to be called their average, if this function becomes a, when all the quantities are equal to a. Thus $\sqrt[r]{\frac{\Sigma_1^n a^r}{n}}$, where r is any quantity, and

$$\frac{w_1 a_1 + w_2 a_2 + \ldots + w_n a_n}{w_1 + w_2 + \ldots w_n},$$

where $w_1, w_2, \ldots w_n$ are any quantities, would be properly called averages.

The last-written fraction is called the *weighted average* of the quantities $a_1, a_2, \ldots a_n$, and $w_1, w_2, \ldots w_n$ are the weights. [If a_1, etc., were the distances measured along a straight line of weights w_1, etc., the formula just written gives the position of their centre of gravity.] When we are dealing with a group consisting of a known number, w_1, of a_1's, w_2 of a_2's,

etc., the weighted average is the same as the arithmetic average; but in many cases the weights are not known whole numbers, but numbers chosen from considerations of the relative importance of the quantities a_1, etc., in determining some general result, and then the weighted average is a distinct expression. It is to be noticed that errors in weights are partly neutralised by their occurrence both in numerator and denominator.

Other averages are obtained by choosing one or more quantities with reference to their position in a group arranged in order of magnitude. Suppose all the terms of a group arranged in ascending order of the magnitude of the attribute we are considering, then the magnitude belonging to the term half-way up the group is called the *median*, and the term is called the *median* term. The median is thus the quantity in a group which has equal numbers of other quantities above it and below it. The magnitudes whose positions are one-quarter and three-quarters respectively up the group are called the *quartiles*; those one-tenth, two-tenths . . . up are the *deciles*; those one-hundredth, two-hundredths . . . up are the *percentiles*. The method of describing a group by any system of numbers chosen in this way with reference to their position is sometimes called the percentile method. These numbers cannot in general be determined exactly. In the case of the median, if there is an odd number of terms in the group, all known exactly, the median is also known exactly; but if there is an even number of terms, the median may by definition lie anywhere between the two middle terms; similarly with the quartiles, etc. If there are many terms, grouped closely together, the terms between which the various percentiles lie are so near together, even if not identical, that the percentiles are known with all requisite exactness. In practice a further difficulty arises from the fact that items are often not tabulated exactly, but given only as between assigned limits; then without interpolation the percentiles can only be determined as between similar limits. Examples of methods of approximation are given below.

The *mode* of a group with reference to a particular attribute is that magnitude of the attribute of which there are most instances. If the group is expressed by a diagram in which the abscissæ represent the magnitudes and the ordinates the number of terms whose magnitudes are the corresponding abscissæ, the abscissa corresponding to the greatest ordinate is the mode. The mode is also called the *position of greatest density*, or of the *maximum ordinate*. As in the case of the median, if the numbers and quantities are known exactly, the mode is determinate; but if the numbers are tabulated as of quantities within assigned limits, then the mode is only known as lying within similar limits, and can only be found by methods of approximation.

The discussion of these methods and further explanation of these averages is best carried on with the help of a concrete example. The following table is extracted from the Census of the County of York, 1901 (Cd. 1107), p. 205 :—

Ages of wives, present with their husbands, in the registration county of Yorkshire, 1901, *the husbands being aged as much as* 45 *years and not so much as* 50.

Ages of Wives.			Numbers.		Numbers below	
As much as 16 and not so much as		17	1			
„	17	„ 18	0	4		
„	18	„ 19	1			
„	19	„ 20	2		20 years	4
„	20	„ 21	7	91	25 „	95
„	21	„ 25	84			
„	25	„ 30	530		30 „	625
„	30	„ 35	1,954		35 „	2,579
„	35	„ 40	6,917		40 „	9,496
„	40	„ 45	21,575		45 „	31,071
„	45	„ 50	30,503		50 „	61,574
„	50	„ 55	6,330		55 „	67,904
„	55	„ 60	990		60 „	68,894
„	60	„ 65	187		65 „	69,081
„	65	„ 70	43		70 „	69,124
„	70	„ 75	9		75 „	69,133
„	75	„ 80	0		80 „	69,133
„	80	„ 85	1		85 „	69,134
			Total 69,134			

Counting the ages in each given group as having for their simple average the middle of the group, we have for the simple average of the whole

$$\{1 \times 16\tfrac{1}{2} + 1 \times 18\tfrac{1}{2} + 2 \times 19\tfrac{1}{2} + 7 \times 20\tfrac{1}{2} + 84 \times 23 + 530 \times 27\tfrac{1}{2} + 1954 \times 32\tfrac{1}{2} + \text{etc.}\}$$

years, divided by 69,134, which gives **44·985** years.

If we used approximate methods, we might find the average thus:—

1. Middle of Age Group.	2. Number of Wives to nearest 100.	3. Number of Wives to nearest 1000.
$22\frac{1}{2}$	1	0
$27\frac{1}{2}$	5	1
$32\frac{1}{2}$	20	2
$37\frac{1}{2}$	69	7
$42\frac{1}{2}$	216	22
$47\frac{1}{2}$	305	31
$52\frac{1}{2}$	63	6
$57\frac{1}{2}$	10	1
$62\frac{1}{2}$	2	0
	Total 691	70

Here the numbers in column 2 or 3 may be regarded as the *weights* to be applied to the ages in column 1, and the weighted average taken: thus from column 2 we have for the approximate simple average in years

$$\frac{22\frac{1}{2} \times 1 + 27\frac{1}{2} \times 5 + }{691} = 22\tfrac{1}{2} + 5 \times \frac{5 \times 1 + 20 \times 2 + 69 \times 3 + }{691} = 44{\cdot}97,$$

and from column 3, **44·8**.

To find the *median*, we notice that more than half the wives are below 50 years, and less than half below 45 years; the median age is then between

45 and 50 years. For a nearer approximation, we will assume that the 30,503 wives in the group 45-50 years are uniformly distributed as to age in this group: to obtain the median we must count up till we have $\frac{1}{2}$ of 69,134 – 31,071 from this group, and the required age is then $45 + \frac{3496}{30503}$ of $5 =$ **45·573** (years).

The quartiles are to be found in the groups 40-45 years, and 45-50 years; the lower is, by a similar approximation, $40 + \frac{17283 - 9496}{21575}$ of $5 =$ **41·80** (years); the higher **48·41**.

The greatest group is that in the period 45-50 years, and the *mode* is therefore between 45 and 50 years for a first approximation; but it is obvious that this position is easily affected by the particular ages chosen as limits to the groups, and that without further examination the mode is not definite.

We now proceed to illustrate the use of two methods of interpolation:

(i.) *Interpolation by Parabolic Formulæ.*—Let us assume that the equation $y = a_0 + a_1x + a_2x^2 + a_3x^3$, where x represents age and y number of persons, and the A's are constants to be determined, represents a curve passing through the four points

x (Number of years above 40.)	y (Number of wives not more than x years old.)
0	9,496
5	31,071
10	61,574
15	67,904,

and forming a close approximation to the ideal curve we should have if we had complete data of the ages of all the wives. This curve passes through the four given points lying two on each side of the median. More points and a parabolic curve of a higher degree may of course be used. We have the following equations, expressing that the points lie on the curve:—

$$\begin{aligned} 9{,}496 &= a_0 \\ 31{,}071 &= a_0 + 5 \,.\, a_1 + 5^2 a_2 + 5^3 a_3 \\ 61{,}574 &= a_0 + 2 \,.\, 5 \,.\, a_1 + 2^2 \,.\, 5^2 \,.\, a_2 + 2^3 \,.\, 5^3 a_3 \\ 67{,}904 &= a_0 + 3 \,.\, 5 \,.\, a_1 + 3^2 \,.\, 5^2 \,.\, a_2 + 3^3 \,.\, 5^3 \,.\, a_3 ; \end{aligned}$$

whence $5 \,.\, a_1 = 6077\frac{1}{8}$, $5^2 \,.\, a_2 = 21{,}014\frac{1}{2}$, $5^3 \,.\, a_3 = -5516\frac{1}{8}$.

The median age is then the value of x corresponding to one-half of the total number of wives, and is therefore given by the equation

$$34{,}567 = a_0 + a_1x + a_2x^2 + a_3x^3.$$

Solving this equation in x, we find $x = 5{\cdot}547$, and the median age is **45·547** years.

The quartiles are found by putting $y = \frac{1}{4}$ of 69,134 and $\frac{3}{4}$ of 69,134 respectively, and solving, and are **42·54** and **48·23** years. Other percentiles can be found by a similar process, but the fixed points must be taken so as to lie near the position of the percentile required.

To find the *mode*, we have to determine the maximum ordinate of the parabolic curve: this is given by the equation

$$0 = \frac{d^2y}{dx^2} = 2a_2 + 6a_3x \,;\; x = -\frac{a_2}{3a_3} = 6{\cdot}3486 \,;$$

whence the mode is **46·3486** years.

(ii.) *Approximation by the use of the Curve of Error.*—The equation to the second approximation to the curve of error in its integral form is

$$Y_x = \frac{N}{c\sqrt{\pi}} \cdot \left[\int_0^x e^{-\frac{x^2}{c^2}} dx \mp \frac{j}{3\sqrt{\pi}} \left\{ 1 - e^{-\frac{x^2}{c^2}} \left(1 - \frac{2x^2}{c^2} \right) \right\} \right].$$

where Y_x is the number of instances between the centre of gravity and the abscissa x (measured from the centre of gravity as origin), N is the whole number of observations, and c and j are obtained as follows:—

Let $d_1, d_2 \ldots d_N$ be the *deviations*[1] of the N observations from their simple average; then $\sqrt{\frac{\Sigma d^2}{N}} = \sigma$ is called the *error of mean square*, and $\sqrt{2} \cdot \sigma = c$, (called the *modulus*). The quantity $\sqrt[3]{\frac{\Sigma d^3}{N}}$ is the *error of mean cube;* calling this j, $\frac{j}{c^3} = \mathrm{j}$, the quantity in the above equation. In the example with which we are dealing, $c = 6{\cdot}98$ (years), c representing a concrete quantity, and $\mathrm{j} = -{\cdot}174$, j being an absolute quantity. The relevancy of the normal curve of error (obtained by taking j as zero in the above), and of the second approximation to the curve of error, is discussed by Professor Edgeworth (see, for example, *London and Edinburgh Philosophical Magazine*, vol. xxxiv. 1892, p. 429).

The *median* of the curve has an abscissa, measured from the centre of gravity $-\frac{1}{3}jc$, and the *mode* has abscissa $-jc$. Thus by this method the median of the wives' ages is $44{\cdot}98 - \frac{1}{3} \times (-{\cdot}174) \times 7 = \mathbf{45{\cdot}39}$ (years), and the mode is $44{\cdot}98 - (-{\cdot}174) \times 7 = \mathbf{46{\cdot}20}$ (years).

In the annexed table are given the values of the curve of error integral, when c is 1, for various values of the abscissa and of j. Any group can be readily compared with the table by reducing the abscissæ to unit c.

$$\text{Values of } Y_x = \frac{1}{\sqrt{\pi}} \int_0^x e^{-x^2} dx \mp \frac{j}{3\sqrt{\pi}} \left\{ 1 - e^{-x^2}(1 - 2x^2) \right\}^2$$

F (x)

x	When j = 0, (Normal curve of error.)	j = ·05	j = ·1	j = ·15	j = ·2	j = ·25	j = ·3
		(A symmetrical curve of error.)[2]					
+2·2	·499	·489	·479	·469	·459	·449	·439
+2·0	·498	·487	·477	·466	·456	·445	·434
+1·8	·495	·484	·472	·461	·449	·438	·427
+1·6	·488	·476	·463	·451	·438	·426	·414
+1·4	·476	·463	·450	·436	·423	·409	·396
+1·2	·455	·441	·428	·414	·401	·387	·373
+1·0	·421	·408	·395	·383	·370	·357	·344
+0·8	·371	·360	·349	·338	·328	·317	·306
+0·6	·302	·295	·287	·280	·272	·265	·257
+0·4	·214	·210	·206	·202	·198	·194	·190
+0·2	·111	·110	·109	·108	·107	·106	·104
0	·000	·000	·000	·000	·000	·000	·000
−0·2	·111	·112	·113	·114	·115	·116	·118
−0·4	·214	·218	·222	·226	·230	·234	·238
−0·6	·302	·309	·317	·324	·332	·339	·347
−0·8	·371	·382	·393	·404	·414	·425	·436
−1·0	·421	·434	·447	·459	·472	·485	·498
−1·2	·455	·469	·482	·496	·509	·523	·537
−1·4	·476	·489	·502	·516	·529	·543	·556
−1·6	·488	·500	·513	·525	·538	·550	
−1·8	·495	·506	·518	·529			
−2·0	·498	·509	·519	·530			
−2·2	·499	·509	·519				

The approximation breaks down for the values of x and j corresponding to these places.

[1] The deviation of an observation is the result (positive or negative) of subtracting the simple average of the group from it.

[2] From the *Journal of the Royal Statistical Society*, June 1902.

The diagram annexed shows the relation between the observations and the curve of error. The curved line is the curve of error, modulus 7 (years), with j = − ·18. The dotted rectangles (to the points *c*, *d*, *e*, *f*, *g*, *h*), show the areas contained by the parts of this curve bounded by the ordinates through 30 years, 35 years, etc. The rectangles to A, B, C, D, E, F, G, H, I are proportional to the numbers in the successive age groups. The two sets of rectangles would coincide if the curve fitted the observations exactly. $\bar{c}$, O, and M are the positions on the scale of years of the arithmetic mean, the median, and the mode respectively.

Dispersion and Skewness

In the second method of approximation we have anticipated the measurement of dispersion and of skewness It is convenient to have a measurement of the grouping of observations about their average, and this can be made in various ways. *First*, the distance between the median and either of the quartiles supplies such a measure; but, since the quartiles are not necessarily equidistant from the median, it is better to use half the distance between the quartiles. In the above example, this gives 2·85 years. If an instance is taken at random out of a group, it is as likely as not to be between the quartiles, and for this reason the above measurement is often, but inappropriately, called the "probable error." This method is, however, open to the two objections that the quartiles cannot in general be determined exactly, and that the magnitudes of the observations only enter indirectly, especially those of the observations outside the quartiles. To obviate this we may take, *secondly*, the *mean of the errors*, that is the simple average of all the deviations of the observations from their arithmetic mean, all taken positively: this is $\frac{\Sigma d}{N}$ in the notation just used, if all the *d*'s are taken positively. The mean of the errors in the example taken is 4·08 years. *Thirdly*, we may take the *error of mean square*, as defined above to measure the dispersion; and owing to its use in connection with

the method of least squares, and to certain theoretical considerations, this (or the modulus which is obtained by multiplying the error of mean square by $\sqrt{2}$) is in general the best to use.

In the normal curve of error we have the following numerical relations: probable error = modulus × ·4769; mean of the errors = modulus × ·5642. In the above example of ages the probable error and the mean of the errors calculated from the observations are $c \times \cdot 41$ and $c \times \cdot 58$ respectively.

When a group is not symmetrical, the relation of the arithmetic mean to the median or the mode affords an obvious method of measuring the *skewness*. But, since the median and the mode are both indeterminate, it is best to obtain a measure, which takes in all the deviations in a definite manner. j, as defined above, is such a measure, and is also, in fact, the distance between arithmetic mean and mode (reduced to modulus as unit) in that curve of error, which is obtained by calculation from the observations. j is considered positive when the arithmetic mean lies on the positive side of the mode; the group then stretches further in the positive than in the negative direction. It is to be noticed that the median of a group is that quantity the sum of the deviations (all reckoned positively) a minimum. Suppose a telephone exchange to be required, with one wire direct to each of a number of stations on a straight line, the median of their positions would make the total length of wire required a minimum; and if there were an even number of stations, its position between the two central stations would be indeterminate. The arithmetic mean is the quantity the sum of the squares of the deviations from which is a minimum.

The particular average or group of averages to be taken depends entirely on the nature of the group, and the purpose for which the average is required. The *percentile method* has the advantage of being applicable to a great variety of groups, whether conforming to the curve of error or any other algebraic law or not, and it can even be used where objects cannot be measured but only placed in order of magnitude. The measurement by *arithmetic mean, modulus, and* j supplies a very definite and logical means of describing in brief those groups which have an affinity to the curve of error. The *mode* is important when a type is sought, or where a venture is to be made on a particular value; for the mode is the value most probably obtained if an example is taken at random from a group. The *logarithmic mean* is important when we deal with objects affected by causes which affect their ratio rather than their absolute magnitude.

If we take n samples from a group of things whose modulus is c, the arithmetic mean of these n things belongs to a group whose modulus is $\frac{c}{\sqrt{n}}$. This is generally expressed by the statement that the precision (which is reciprocal to the modulus) of an average is proportional to the square root of the number of terms involved. The statement can be proved mathematically when the original group belongs to a normal curve of error; and it is approximately true when the original group belongs to any assigned curve of frequency with finite deviation, if n is large.

For further information as to the nature and use of averages, and for the sources of the above statements, see *infra*.

LITERATURE.—TODHUNTER, I. *History of the Theory of Probability*, especially articles 993-1002.—*Encyclopædia Britannica*, "Probability"; supplement to ninth edition, "Error."—*Dictionary of Political Economy* (PALGRAVE'S), "Average," "Law of Error."—VENN, Dr. J.

The Logic of Chance; also "Nature and Use of Averages," in *Journal of the Royal Statistical Society*, 1891.—*Dictionnaire encyclopédique des sciences médicales*, "Moyenne."—MERRIMAN, M. *Method of Least Squares.*—CHAUVENET. *Practical and Spherical Astronomy*, vol. ii. Appendix.—EDGEWORTH, Prof. F. Y. In the *London, Edinburgh, and Dublin Philosophical Magazine and Journal of Science*, 5th series, vols. xxi.–xxv., xxx., xxxiv.–xxxvi. and xli.; in the *Journal of the Royal Statistical Society*, 1886, 1895–1900, 1902, and the Jubilee volume (1885); in the *Camb. Phil. Soc. Trans.* 1885 and 1886.—BOWLEY, A. L. *Elements of Statistics* (2nd edition), chap. v. part. ii. and appendix; [bibliography, p. 327,] and in the *Journal of the Royal Statistical Society*, 1897.

A. L. BOWLEY.

Award.—The decision of an arbitrator or umpire to whom parties have referred a dispute.

Back-Bond or Back-Letter.—In Scots law is a subsidiary deed modifying the principal deed. Thus, one who is apparently by the principal deed absolute owner of a property may grant a back-bond declaring that he holds the property simply as a trustee or mortgagee.

Back-Letter. *See* BACK-BOND.

Backwardation.—The fine or charge paid by a seller of stock who has sold stock for the account, and then finds himself unable to deliver the stock, and is compelled to ask the dealer to allow him to prolong the bargain till the next settlement. Backwardation is the chief source of profit when there is a corner in any stock, and the settlement of the bargain has to be deferred from settlement to settlement. The seller is compelled practically in some cases to pay the buyer whenever he asks.

Bail.—When a person is in the custody of the law, and such person is handed over to another who undertakes to keep him safely and to produce him to answer to the charge, the person so handed over is said to be on bail, and the one to whom he is handed over is called the bailee or more commonly, the bail. The obligation of the bailee or bail is constituted by a bond. In crown cases, civil or criminal, the obligation of the bailee or bail is constituted by a bond acknowledging indebtedness to the crown in a specified sum, to be discharged on conditions specified.

Balance of Trade.—The doctrine or policy of the favourable balance of trade is that the exports of a country should always exceed the imports. Apart from international obligations such as tributes, the exports of a country must for a term of years pay for the imports. No country can continue long receiving from other countries consumable commodities without giving something in return. The store of coin and the power of increasing debt must eventually become exhausted. Produce must be for produce including under produce both service and freights. If a nation attempts to import more than its normal exports can pay for there is bound to be a drain on its money, which would necessitate a fall in prices within the country. As this fall would simply stimulate exports and place a check on imports the balance would soon be again restored. No amount of legislation or government, therefore, can ever obtain a permanent and constant excess of exports over imports with the view of a balance being due on the precious metals. So far as the exchange is concerned, the precious metals merely rank along with other commodities, and all exchange in its ultimate result must in theory be looked upon as barter. Exports

and imports form only a part of the international indebtedness, and there must also be taken into account such invisible exports as freights, commissions, loans, expenses of government or individuals abroad, and interest. It must, however, be noted that it is not the permanent indebtedness, but the need of payments at a particular time which is often of supreme importance to a country. Thus, the balance of trade may be in favour of a country which is hopelessly insolvent.

From the banking point of view the existence of a favourable balance of trade is of importance, as it means that importers of foreign goods can obtain exporters' bills at a cheaper rate. A foreign drain, however, sometimes becomes so serious as to threaten the stability of the banking system of a country through the drain of the precious metals, and this can only be set right by raising the rate of discount, or by increasing the exports and checking the imports.

For many years the imports of commodities into this country have exceeded the exports. In India the reverse is the case, and the explanation is found in the other elements of international indebtedness.

Balance Sheets.

Definition	203
On which side of the Balance Sheet the Assets should be placed	204
A Full and Fair Balance Sheet	207
Balance Sheet of a Bank	208
Arrangement of Balance Sheets	210
Form of Balance Sheet appended to the Building Societies Act 1894	214
Form of Balance Sheet given in Second Schedule of the Life Assurance Act 1870	215
Form of Balance Sheet given in Fourth Schedule of the Life Assurance Act 1870	216

Definition.—A balance sheet is a concise statement compiled from the books of a concern which have been kept by double entry, showing on the one side all the assets and on the other side all the liabilities of the concern at a particular moment of time. A similar statement when not prepared from books kept by double entry is called a statement of affairs, a state of affairs, or a statement of assets and liabilities. The distinction is important. The balance sheet of a business is prepared for the purpose of showing the financial condition of the concern at a particular moment of time, and should be so classified and arranged as to give the clearest and fullest idea of the financial position of the business. The balances shown by the trial balance having been adjusted by the closing entries giving effect to the valuations of stock, unexpired charges, reserves, and other particulars, the balances remaining are assets so far as they are debit balances, and liabilities so far as they are credit balances. The amounts due by customers and the amounts due to creditors, and other particulars involving many items, are not given in the balance sheet in detail, but are contained in separate schedules or lists, or in a balance book kept for the purpose. If the assets exceed the liabilities the balance sheet shows a surplus, which is due to the owner or owners of the business, and forms the capital of the concern. Capital is therefore the surplus of assets over liabilities, or the measure of the indebtedness of a business to the owners in respect of money invested in the business and accumulated profits. It is the principal sum invested or remaining in the

business. Book-keeping is so complete and thorough that even the owner of a business is looked upon as an outsider, and his account, called the Capital Account, is credited with what he puts into the business, as he means to get back again what he puts in, he becomes a creditor of the business for it, and he also gets credit for any profit the business earns, as he is entitled to that also. The Capital Account was formerly sometimes called the Stock Account, but this use of the word "stock" is now almost obsolete, and it is as well, to prevent confusion, to keep the word "stock" for goods and merchandise.

In the case of a company, as for example one registered under the Companies Act of 1862, where the capital is fixed, the surplus of assets over liabilities may consist of the capital, of a reserve created for the benefit of the shareholders and the stability of the company, and of the unappropriated or undivided profit.

If the liabilities exceed the assets the balance sheet shows a deficiency, and the amount of the deficiency is the measure of the insolvency of the concern, or the indebtedness of the owners to the business for losses incurred.

A balance sheet may thus be defined as a statement of the liabilities of a concern (credit balances as taken from the ledger), including the capital, reserve, and unappropriated profit, on the one side, and the assets of the concern (debit balances as taken from the ledger), including any deficiency, on the other.

The main distinction between a Profit and Loss Account and a balance sheet is that the Profit and Loss Account shows the progress of the business during a period, while the balance sheet shows its position at a particular moment.

ON WHICH SIDE OF THE BALANCE SHEET THE ASSETS SHOULD BE PLACED.—When a book-keeper has completed those entries known as "closing" entries, including the preparation of the Profit and Loss Account, and has balanced off all the Ledger Accounts, carrying down the balances to begin the accounts for the next year, he usually prepares a statement of the ledger balances, arranging all the debit balances in the left money column, and all the credit balances in the right money column, in some such form as the following:—

STATEMENT OF LEDGER BALANCES as at 31st December.

	Dr.	*Cr.*
CUSTOMERS' LEDGER:—		
J. Collins	£300 0 0	
W. Simpson	650 0 0	
	£950 0 0	
CREDITORS' LEDGER:—		
Jack and Co.		£370 0 0
Scott and Tait		230 0 0
		£600 0 0
GENERAL LEDGER:—		
Bills payable		280 0 0
Bills receivable	300 0 0	
Goods	700 0 0	
Rent		20 0 0
Capital		1210 0 0
DUE BY BANK	95 0 0	
CASH ON HAND	65 0 0	
	£2110 0 0	£2110 0 0

It will be observed that in the foregoing statement all the balances of the accounts appear just as they are in the ledger after the balances have been carried down, that is, the debit balances are entered in the debit column, and the credit balances in the credit column. The particulars above given in the statement of ledger balances, if thrown into the form of a balance sheet, would appear as follows:—

(*Correct Form.*)

BALANCE SHEET as at 31st December

Assets.		*Liabilities.*	
Due by Customers	£950 0 0	Due to Wholesale Houses	£600 0 0
Bills Receivable	300 0 0	Bills Payable	280 0 0
Goods on Hand	700 0 0	Rent accrued to date	20 0 0
In Bank	95 0 0		£900 0 0
Cash on Hand	65 0 0	Capital	1210 0 0
	£2110 0 0		£2110 0 0

In the above balance sheet it will be observed that the assets appear on the left side, and the liabilities on the right side of the statement, just as they appear in the ledger. It will be observed, further, that the contractions *Dr.* and *Cr.*, for debtor and creditor, are not used as part of the heading. This is because the balance sheet is not an account, but is a statement of ledger balances. In a set of books kept completely by double entry, and in which even the balancing of the accounts is done through the medium of the journal, an account is used entitled the "Balance Account," into which all the balances are transferred at the close of the year, and in which the Ledger Accounts would appear as they are given in the above statement of ledger balances. For the opening entries a Balance Account would also be used, but the items would necessarily appear on opposite sides from the closing Balance Account. The balance sheet, if given in the form above shown, is thus practically a copy of the closing Balance Account. From this point of view the assets should undoubtedly be placed on the left side of the balance sheet, which corresponds to the debit side of the closing Balance Account. Further, all balances which represent assets are debit balances, and accountants and bookkeepers naturally come to associate assets with the debit or left side of either an account or a statement. Theoretically, therefore, the left side is the side upon which the assets should appear in the balance sheet. In practice in the United Kingdom, however, the assets are usually to be found upon the right side, and it may prove interesting as well as instructive to investigate the matter further. The fundamental idea of a balance sheet is that it is a statement showing how the Ledger Accounts of a concern stand at a particular moment of time. It would be unnecessary if we could see and comprehend at one view the contents of a set of ledgers. As we are unable to do this we prepare a balance sheet, but why in the process the assets which are on the debit side and the liabilities which are on the credit side, as according to the principles of accounting they ought to be, should change places, it is impossible to justify. The custom seems to have arisen through the influence of the forms given in Acts of Parliament, chiefly the Companies Act, 1862, which must have been prepared by those unacquainted with the theory of accounts. The Profit and Loss Account is taken from the ledger without the sides being transposed,

and there is no logical reason why the sides in the balance sheet should be reversed when the items in it are the balances remaining in the ledger after certain other balances have been taken to the Profit and Loss Account. In the accounts of public undertakings, such as railways, formed under the sanction of Acts of Parliament, when the receipts and expenditure on account of capital must be published, the Capital Account, in the form prescribed, has the items as they appear in the ledger, but the balance sheet, the form of which is also prescribed, has the items reversed. The form of balance sheet in which the assets appear upon the left side is both theoretically the correct form and in practice is the more convenient form to use. It is the form adopted on the Continent, in America, and, in fact, throughout the world, with the exception of the United Kingdom. Until recent years it was the form almost universally adopted in Scotland. Prior to about the passing of the Companies Act 1862, it was the form chiefly adopted in England, but is so no longer. It is known by the name of the Continental or Scotch form. The form of balance sheet prescribed by Table A of the Companies Act 1862 has the liabilities on the left side, and this is the form now generally adopted throughout the United Kingdom. The Scotch form, however, is still largely used in Scotland, even for companies under the 1862 Act which applies to Scotland. The practice is so diverse that there are firms of accountants in which one of the partners invariably uses one form and the other partner as invariably the other. It is certainly most desirable that the form of balance sheet with the assets on the left side, which is founded on correct principles, should become universal, but this could now, in view of existing statutes where the form which is contrary to the true principles of accounting is prescribed, only be brought about by an Act of Parliament. Such an Act would, no doubt, cause a little temporary inconvenience, but this would be nothing to the advantage of having all balance sheets uniform, and conforming to the best traditions and the accepted practice of the rest of the world.

The reason given for putting the liabilities on the left side of the balance sheet is that the balance sheet is a statement showing the position of the business in relation to the owner and to other persons. The business is the creditor for the assets, and is the debtor for its liabilities. This is, however, begging the question. Whichever form is used, the contractions "Dr." and "Cr." should never be put upon a balance sheet, because, as already stated, it is not an account.

Several banks and large financial concerns adopt neither of the methods under discussion, but have the assets placed underneath the liabilities. This is called the report form of balance sheet.

The following statement shows how the assets and liabilities were treated by authors of works on book-keeping prior to 1859. After that date the authors of works on book-keeping published in the United Kingdom in most cases adopt the method of placing liabilities on the left side :—

MODE OF PLACING ASSETS AND LIABILITIES IN BALANCE SHEETS

Author.	Date.	Title of Work.	Description of Statement or Account.	Method of Placing.	
				Left-hand Side.	Right-hand Side.
S. Monteage . .	1706	Debtor and Creditor made Easy	Balance	Assets	Liabilities
A. Malcolm . .	1718	Arithmetick and Book-keeping	Balance	Assets	Liabilities
William Webster	1721	Essay on Book-keeping	Balance	Assets	Liabilities
A. Malcolm . .	1731	Book-keeping	Balance	Assets	Liabilities
John Mair . .	1800	Book-keeping Modernised	Balance Account	Assets	Liabilities
T. Dilworth . .	1801	The Young Book-keeper's Assistant	Balance	Assets	Liabilities
W. Lorrain . .	1807	Book-keeping by Double Entry	Balance	Assets	Liabilities
Chas. Hutton .	1810	A Complete Treatise on Book-keeping	Balance	Assets	Liabilities
Rees *Cyclopedia*.	1819	Article on Book-keeping	Balance	Assets	Liabilities
J. Morrison . .	1820	Practical Book-keeping	Balance Account	Assets	Liabilities
P. Kelly . . .	1821	The Elements of Book-keeping	Balance	Assets	Liabilities
J. P. Corg . .	1839	Practical Treatise on Accounts	Balance Account	Assets	Liabilities
C. Morrison . .	1848	Practical Book-keeping	Balance Account	Assets	Liabilities
J. Caldecott . .	1850	Practical Guide to Book-keeping	Balance Account	Assets	Liabilities
B. F. Foster . .	1852	Double Entry Elucidated	Balance Sheet	Assets	Liabilities
G. H. Boulter .	1857	A Course of Book-keeping by Double Entry	Balance	Assets	Liabilities
W. Inglis . . .	1858	Book-keeping	Balance Sheet	Liabilities	Assets
James Haddon .	1859	Rudimentary Book-keeping	Balance Account	Assets	Liabilities

A FULL AND FAIR BALANCE SHEET. — The Companies Act of 1862 does not specially state how the balance sheet of a company is to be prepared, but the following regulations are given in Table A appended to the Act, and these regulations apply to all companies limited by shares, unless they are excluded or modified by the Articles of Association adopted by the company. The following are the regulations relating to the balance sheet:—

Regulation No. 81.—A balance sheet shall be made out in every year, and laid before the company in general meeting, and such balance sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit.

Regulation No. 94.—The auditors shall make a report to the members upon the balance sheet and accounts, and in every such report they shall state whether, in their opinion, the balance sheet is a full and fair balance sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and in case they have called for explanations or information from the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

The 94th Regulation from the Act 1862, given above, is now superseded by the Companies Act 1900, sec. 23, which is as follows:—

23.—Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors; and the auditors shall sign a certificate at the foot of the balance sheet stating whether or not all their requirements as auditors have been complied with, and shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting.

The balance sheet, whether of a company or of a private concern, should

be, as mentioned above, "full and fair." The necessity of a balance sheet being "full and fair" is evident when the uses for which a balance sheet is prepared are considered. A private trader prepares a balance sheet first of all for his own satisfaction and guidance in order to see exactly his financial position at a given date. The trader, however, may be desirous of obtaining a partner, and a balance sheet would require to be prepared as at the date of the assumption of a new partner. This balance sheet, it is evident, must state the assets at their real value as a going concern, allowances being made for depreciated property, and it must also contain all the liabilities at the date of the assumption. The capital of the old partner is ascertained from this balance sheet, and if it showed the assets at figures in excess of their real value, or if the liabilities were understated, the new partner would be prejudiced. Cases have occurred where a partner has been assumed, and after he had sunk his capital in a concern on the basis of a false balance sheet, it has been discovered upon investigation that the business at the time of the assumption of the partner was hopelessly insolvent. A balance sheet is often used when a trader is negotiating a loan, and in this case the balance sheet is used by the bank or other lender for his information, and everything depends upon the care and honesty with which it has been prepared. When a private trader or firm is being converted into a limited company, a balance sheet is made up, but this balance sheet is very seldom used as the basis of valuation. Separate valuations of the property, plant, etc., are in most cases made, and it is at these figures that the assets are taken over.

THE BALANCE SHEET OF A BANK not only shows its financial position at the date at which it is prepared, but it is so framed as to show the assets in the order of realisability, and thus enable its depositors and customers to judge of its ability to meet all possible demands. The assets should be arranged so as to show the liquid or easily realisable assets distinct from the others. The form on p. 209 may be taken as the balance sheet of a bank as published at the present time.

The balance sheet of a limited company shows the shareholders the financial position of the company; but the balance sheet also shows to a creditor, who is contemplating giving the company credit, the total assets, including the uncalled capital, which are available for payment of his debt.

In a balance sheet everything depends upon the character of the various assets and liabilities. Thus, if the liabilities are of such a nature that the owner of the business may be called upon to pay them within short notice, then the assets must be such as to be realisable in the same time. Otherwise, while the business may be thoroughly solvent, that is, may have a surplus of assets over liabilities, the owner may be rendered bankrupt through being unable to meet some liability which can be legally at the time enforced against him.

All the assets included in a balance sheet should be stated at their fair value, and the liabilities should be fully shown. The balance sheet should not conceal any weakness in the financial position of the concern, but should give the fullest information to the shareholders and the general public, consistent, of course, with the proper conduct of the business. In some cases it might be advisable not to reveal too much, in consequence of the competition of similar concerns, but what is really the failing of balance sheets is that they reveal too little and not too much. The balance sheet formerly given in the Scotch form is now given in the English form, but it has been varied slightly to show a better method of grouping the assets,

Balance Sheet as at 31st December 19 .

Liabilities.				*Assets.*			
I. To the Public :—				Gold and Silver Coin at Head Office and Branches . .			£400,000 0 0
Notes in Circulation			£500,000 0 0	Cash at Call with London Bankers			200,000 0 0
Deposits and Credit Balances			4,000,000 0 0	Do. with other Banking Correspondents, Exchangeable Notes and Cheques on other Banks			150,000 0 0
Balances Due to Banking Correspondents . . .			6,000 0 0				£750,000 0 0
Drafts Issued, Payable on Demand			82,000 0 0	Consols and other Securities of the British Government	£200,000 0 0		
			£4,538,000 0 0	England, s . .	300,000 0 0		
II. To the Partners :—				ks, other . .	500,000 0 0		
Capital Authorised and Subscribed—100,000 Shares of £20 each		£2,000,000 0 0		nd other . .	200,000 0 0		1,200,000 0 0
viz.—							£1,950,000 0 0
£4 per Share Paid up	£400,000	£400,000 0 0		Bills Discounted, Advances on Cash Credit Bonds and on other Accounts and Securities			2,500,000 0 0
4 ,, Callable	400,000			Bank Buildings, Furniture, and Fittings, at Head Office and Branches			738,000 0 0
12 ,, Reserved	1,200,000						£5,188,000 0 0
£20	£2,000,000						
Reserve Fund		200,000 0 0					
Profit and Loss Account . .		50,000 0 0					
			650,000 0 0				
			£5,188,000 0 0				

and it has further been assumed that the balance sheet is that of a company with a paid-up capital of £700.

BALANCE SHEET as at 31st December.

(*English Form.*)

Liabilities.				*Assets.*			
DUE TO CREDITORS :—				DUE BY CUSTOMERS :—			
On Open Accounts		£600 0 0		On Open Accounts		£950 0 0	
On Bills Payable		280 0 0		On Bills Receivable		300 0 0	
		£880 0 0				£1250 0 0	
RENT ACCRUED TO DATE		20 0 0		GOODS ON HAND		700 0 0	
DUE TO SHAREHOLDERS :—				CASH :—			
Capital	£700 0 0			In Bank	£95 0 0		
Undivided Profit	510 0 0			On Hand	65 0 0		
		1210 0 0				160 0 0	
		£2110 0 0				£2110 0 0	

The following might have been the Profit and Loss Account of this company for the year :—

PROFIT AND LOSS ACCOUNT for the Year.

Expenditure.		*Income.*	
To Cost of Goods	£2200 0 0	By Sales	£3000 0 0
,, Rent	70 0 0		
,, Wages	200 0 0		
,, Discount	20 0 0		
,, Profit for Year	510 0 0		
	£3000 0 0		£3000 0 0

If the balance sheet in the English form and the Profit and Loss Account of this company were printed in the annual report to the shareholders, as is usually the case, it will be observed that the net profit of £510 would appear on the left side of the balance sheet, and also on the left side of the Profit and Loss Account. It is more in keeping with our ideas of book-keeping by double entry that these items should appear on opposite sides, as they would do if the Scotch form of balance sheet were adopted.

ARRANGEMENT OF BALANCE SHEETS.—Much skill may be displayed in arranging the items of the balance sheet so as to give the fullest information in such a form as will be most readily understood and most available for the purposes for which the balance sheet is to be used.

Assets.

One arrangement is to place the assets which are most easy to realise first, followed by the other assets in the order in which they are easiest of realisation.

Cash on hand or in bank under this method would come first, but in

most balance sheets they appear last, the idea being that they are assets already realised, and are available for payment of liabilities at any time. The cash on hand and cash in bank should be kept quite distinct, but the total of the two should be shown. Investments which are capable of being speedily realised should then follow. Amounts due by customers would come next, distinguishing between amounts due on bills receivable and amounts due on open accounts. These two items should be shown in an inner column, and the total extended. The idea in distinguishing between amounts due on bills receivable and amounts due on open account is that the former are more valuable assets than the latter in the sense that no further proof of the existence of the debt than the bill is required, while with sums due on open accounts, if the debt is disputed, various formalities would have to be gone through, such as proving that the person actually got value for the debt, before the money could be recovered.

The open accounts should be classified according to "good" and "doubtful," and any allowances for bad debts and discounts should be deducted from the total due by customers, and the net amount extended as an asset.

Goods on hand would come next, in some such order as manufactured goods, goods in process of manufacture, and raw materials.

Heritable property and other assets of a real nature would follow, and thereafter might be entered patents and goodwill, which are assets of a very speculative nature.

Liabilities.

The liabilities due to outside creditors should be stated before the liabilities to the shareholders or owners of the business, although by the form given in the Companies Act 1862 this is not done.

The amounts due to creditors should be stated in the order of priority of the claims or of the powers the creditors have of enforcing their claims. The amount due on bills payable should be distinguished from the amount due on open account. The sundry unpaid but accrued charges would come next. Borrowed capital, whether in the form of ordinary loans on personal security or debentures, should then be detailed. The foregoing liabilities to the outside creditors would be added up at this point, thus showing the total liabilities to outside creditors.

The amount due to shareholders, including capital, reserve, and undivided profit, would be the last item on the liabilities side of a company's balance sheet.

Loans over heritable property are very often deducted from the value of such property and the net amount extended as an asset, but it is preferable to show the property at its full figure among the assets, the loan appearing as a liability among the liabilities, although a cross reference may be made.

The following skeleton form of balance sheet illustrates the above method of arrangement:—

BALANCE SHEET as at

Liabilities.		*Assets.*	
TRADE CREDITORS :—		CASH :—	
Due under Bills Payable .	£	On Hand	£
Due on Open Accounts . .		In Bank	
	£		£
SUNDRY CHARGES ACCRUED TO DATE :—		INVESTMENTS	
Rent . . . £		DUE BY CUSTOMERS :—	
Taxes . . .		Bills Receivable . £	
Wages, etc. .		Open Accounts :—	
		Good . . .	
LOANS OVER HERITABLE PROPERTY :—		Doubtful . .	
Amount due over the security of .... £			£
Interest due and accrued . .		*Deduct*— Reserve for Discount and Bad Debts. . .	
OTHER LOANS (including interest to date)		STOCK ON HAND AS VALUED BY.....	
AMOUNT DUE TO OUTSIDE CREDITORS	£	Manufactured Goods . . £	
DUE TO SHAREHOLDERS :—		Goods in process of manufacture .	
Capital . . £		Raw material .	
Reserve . .		Stores . . .	
Profit . . .		PLANT, MACHINERY, etc. :—	
Were there a debit balance on the Profit and Loss Account, such debit balance should be deducted from the amount due to shareholders.		Amount in last Balance Sheet . £	
		Expended since .	
			£
		Deduct— Depreciation .	
		HERITABLE PROPERTY :—	
		Land . . . £	
		Buildings . .	
		GOODWILL and other assets of an indeterminable or contingent value . .	
	£		£

The form of balance sheet appended to the First Schedule of the Joint-Stock Companies Act of 1862, which will be found as printed in the Act under the heading "AUDITING," is not altogether satisfactory in its arrangement. The following balance sheet practically gives the headings, but under an improved arrangement which should be carefully followed :—

BALANCE SHEET OF A. B. & Co., Ltd., as at 31st December 19 .

Assets.

Cash :—						
On hand					£150 0 0	
In Bank of Scotland					1,025 0 0	
					£1,175 0 0	
Investments :—						
Heritable bond yielding 3 per cent Interest			£500 0 0			
500 Preference Shares of £2, fully paid, in X. & Y., Ltd., yielding 6 per cent Interest			1000 0 0			
					1,500 0 0	
Due by Customers :—						
On Bills Receivable			£2000 0 0			
On Open Account :—						
Good	£3500 0 0					
Doubtful	300 0 0					
			3800 0 0			
			£5800 0 0			
Less Reserve for Discount and Bad Debts			800 0 0			
					5,000 0 0	
Stock-in-trade					3,600 0 0	
Plant, Machinery, etc., at cost			£4000 0 0			
Less Depreciation			750 0 0			
					3,250 0 0	
Heritable Property :—						
Land			£4000 0 0			
Buildings			6000 0 0			
					10,000 0 0	
Goodwill					2,000 0 0	
					£26,525 0 0	

Liabilities.

Debts and Liabilities of the Company :—				
Trade Creditors :—				
On Bills Payable			£6,000 0 0	
On Open Account			800 0 0	
			£6,800 0 0	
Sundry Charges Accrued :—				
Rent	£80 0 0			
Wages	30 0 0			
Taxes and Insurance	15 0 0			
			125 0 0	
Debentures	£5,000 0 0			
Interest to date	40 0 0			
			5,040 0 0	
Amount Due to Outside Creditors			£11,965 0 0	
Due to Shareholders :—				
Capital, 10,000 Shares of £1 each fully paid	£10,000 0 0			
Reserve Fund	3,000 0 0			
Unclaimed Dividends	60 0 0			
Undivided Profit	1,500 0 0			
			14,560 0 0	
Contingent Liability—Bills under Discount	£800 0 0			
			£26,525 0 0	

The following are the forms of Balance Sheet given in the Building Societies Act 1894, and the Life Assurance Act 1870:—

Form of Balance Sheet appended to the Building Societies Act 1894

Dr. LIABILITIES AND ASSETS ACCOUNT. *Cr.*

To Liabilities to Holders of Shares, viz.:—	Principal.	Interest	£ s. d.
	£ s. d.	£ s. d.	
[State the liabilities for each class of Share separately.]			
Paid-up Shares . . .			
Preferential Shares . .			
Total . .			
To Liabilities to Depositors and other Creditors, viz.:—			
For Deposits payable at a fixed period ending within the next 12 months			
For Deposits payable at a fixed period ending after the next 12 months .			
For Deposits payable upon various times of notice, viz.:—			
Due to Bankers for loans .			
To other Creditors for loans			
Other Liabilities, viz.:—			
Total . .			
To Undivided Profit (including Reserve Funds, but not including Prospective Interest), viz.:—			

By Balance due or outstanding on Mortgage Securities, not including Prospective Interest, viz.:—	Principal.	Interest accrued (not prospective).	£ s. d.
	£ s. d.	£ s. d.	
Mortgages from Members where the repayments are not upwards of 12 months in arrears, and the property has not been upwards of 12 months in possession of the Society:—			
On —— Mortgages where the debt does not exceed £500			
On —— Mortgages where the debt exceeds £500 and does not exceed £1000			
On —— Mortgages where the debt exceeds £1000 and does not exceed £3000			
On —— Mortgages where the debt exceeds £3000 and does not exceed £5000			
On —— Mortgages where the debt exceeds £5000, as shown by Part I. of the Schedule . . .			
Total of Mortgages available under sec. 14 of the Act of 1894 . . . ——			
[If the Society has any Mortgages from non-members, the like particulars as above are to be given in full for all such Mortgages.]			
On —— Mortgages on Property of which the Society has been upwards of 12 months in possession, as shown by Part II. of the Schedule . .			
On —— Mortgages where the repayments are upwards of 12 months in arrear, and the property has not been upwards of 12 months in possession of the Society, as shown by Part III. of the Schedule . . .			
Total number of properties mortgaged to the Society —— Total . .			
By other Assets:—			
Amount invested in the Funds (bearing interest at —— per cent)			
Amount invested in other securities, viz.:—			
Nature of Security.	Rate of Interest		
Other Assets, viz.:—			
Cash at Bankers . . .			
Cash in hands of —— .			
By Balance deficient (if any)			

Form of Balance Sheet given in Second Schedule of the Life Assurance Act 1870.

BALANCE SHEET of the on the .

Liabilities.	£ s. d.	*Assets.*	£ s. d.
Shareholders' Capital paid up (if any) . . £		Mortgages on Property within the United Kingdom . .	
Assurance Fund .		Mortgages on Property out of the United Kingdom . .	
Annuity Fund (if any) . . .		Loans on the Company's Policies	
Other Funds (if any) to be specified .		Investments :—	
		In British Government Securities . . .	
		Indian and Colonial Government Securities .	
Total Funds as per First Schedule		Foreign Government Securities . . .	
Claims admitted but not paid .		Railway and other Debentures and Debenture Stocks	
Other Sums owing by the Company (Accounts to be specified)		Railway Shares (Preference and Ordinary) .	
		House Property . .	
		Other Investments (to be specified) . . .	
		Loans upon Personal Security	
		Agents' Balances . . .	
		Outstanding Premiums . .	
		,, Interest . .	
		Cash—On Deposit £	
		In hand and on Current Account .	
		Other Assets (to be specified) .	

The term balance sheet is often erroneously applied to what are really statements of receipts and payments or of revenue and expenditure. Thus, the accounts of charitable institutions are, as a rule, merely cash receipts and payments, although the only statements issued by such organisations are often headed as the balance sheet for the year. The important distinction to observe in the case of a balance sheet is that it is a statement at a particular moment of time. Such statements as abstracts of receipts and payments and abstracts of revenue and expenditure are statements for periods of time, and, in this respect, are quite distinct from balance sheets. The name balance sheet should always be confined to a statement showing the position of matters at a particular date, or, as it has been very happily expressed, at a particular moment of time, and no account covering a period of time, such as those which have already been referred to, should ever be so designated.

A full explanation of the items in the balance sheet of a limited company is given under "AUDITING."

Form of Balance Sheet given in Fourth Schedule of the Life Assurance Act 1870.

BALANCE SHEET of the on the

Liabilities.	£	s.	d.	*Assets.*	£	s.	d.
Shareholders' Capital				Mortgages on Property within the United Kingdom			
General Reserve Fund (if any)				Mortgages on property out of the United Kingdom			
Life Assurance Fund				Loans on the Company's Policies			
Annuity Fund (if any)				Investments :—			
Fire Fund				In British Government Securities			
Marine Fund				Indian and Colonial Securities			
Profit and Loss (if any)				Foreign Securities			
Other Funds (if any) to be specified				Railway and other Debentures and Debenture Stocks			
				Railway Shares (Preference and Ordinary)			
Claims under Life Policies admitted but not paid . £				House Property			
Outstanding Fire Losses				Other Investments (to be specified)			
Outstanding Marine Losses				Loans upon Personal Security			
Other Sums owing by the Company (Accounts to be specified)				Agents' Balances			
				Outstanding Premiums			
				Outstanding Interest			
				Cash—On Deposit . £			
				In hand and on Current Account			
				Other Assets (to be specified)			

The balance sheet of a building society, as it would appear when issued to the shareholders, and an explanation of such a balance sheet, are given under the article on "BUILDING SOCIETIES' ACCOUNTS."

Bank Account.—A banker is under no legal obligation to open an account with any member of the public who may apply to him, and is, like a merchant, at liberty to choose those with whom he desires to have business relations. The relationship of banker and customer, which is substantially that of debtor and creditor, or of lender and borrower respectively, is ordinarily established in one of two ways: (1) either by the banker receiving from his customer a sum of money or certain cheques, bills, or other negotiable documents, the amount of which is collected and placed to the customer's credit on account current or deposit receipt; or (2) by the banker lending his customer a sum of money, or allowing him to overdraw his account, with or without security, negotiable or otherwise. The actual sum of money paid to a banker ceases to be the property of the customer, and belongs to the banker's creditors in the event of his bankruptcy, unless specific appropriation of the amount towards a specific purpose have taken place either wholly or partially (Devaynes ("Sleech's Case"), 1 Mer. 568; Barned's Bank, 39 L. J. Ch. 635; Farley, 26 L. J. Eq. 710).

Name or Heading of Account.—The name or heading of the account

opened in a customer's name is sufficient notice to the bank of the nature of the account. (See Bailey, L. R. 7 Q. B. 41; *ex parte* Kingston, L. R. 6 Ch. Ap. 632.) Where several accounts are opened by one person or set of persons under various headings, the various accounts may be treated by the bank as one, and a debit balance on one account may be compensated by a credit balance in another (Pedder, 31 L. J. C. P. 291). The rule applies equally where the various accounts are kept at different branches of the same bank, and the bank is entitled, without notice, to transfer a credit balance at one branch in reduction or satisfaction of a debit balance at another (Union Bank, L. R. 1898, A. C. 693; Garnett, L. R. 8 Ex. 10; Prince, L. R. 3 Ap. Ca. 325).

Pass-Books and Current Accounts.—The entries in the customer's pass-book, duly authenticated by the bank officials, are *prima facie* evidence against the bank. The bank, however, may show that the entries are erroneous, unless the customer, in the *bona fide* belief that the entries were correct, has altered his position for the worse (Couper's Trs. 1889, 16 R. 412; Skyring, 4 B. and C. 281; Shaw, 4 B. and C. 715). So the entries in the pass-book bind the customer if it has been sent him in ordinary course and returned by him to the bank without objection (Commercial Bank, 3 Macq. H. L. 643). The customer may found on the entries to his credit in the bank's books other than the pass-book, while he is not bound by such entries to his debit (B. L. Bank, 1853, 15 D. 314).

Appropriation of Payments.—The customer may appropriate the money he pays to a banker in any way he pleases, provided the appropriation, either express or implied, is made at the time of payment. In the absence of appropriation by the customer, the banker may appropriate the money as he pleases, and the appropriation becomes irrevocable on its intimation to the customer. If neither banker nor customer make any appropriation, then interest is presumed to be paid before principal, the customer's own debts before those due by him in a fiduciary capacity, and the earlier items on the debit side of the account before the later ("Clayton's Case," 1 Mer. 608; Thomson, L. R. 10 Eq. 497; Pearl, 26 L. J. Ch. 761; Cumming, 29 L. J. Ex. 129; Lang, 1859, 22 D. 113; Cuthill, 1894, 21 R. 549).

Payments by Cheque.—A banker is liable in damages if he fail to honour his customer's cheque if presented within banking hours, and he have funds to meet it (Robarts, 16 Q. B. 560, and cases cited). A banker may not honour a cheque which he knows or believes to be drawn in breach of trust and for his benefit (Gray, L. R. 3 E. and I. Ap. Ca. 1). Presentation of the cheque operates in Scotland as an intimated assignation of the customer's funds up to the amount of the cheque. If the customer's funds are insufficient to wholly meet the cheque it is returned to him, and the actual amount at his credit is transferred to an account in the presenter's name.

Customer's Right to Secrecy.—A banker is bound to protect his customer's interests, and will be liable to him in damages if he disclose facts about his bank account which, as a careful and prudent business man, he should have concealed, and his customer suffer loss thereby.

Death of Customer.—The death of the customer does not *per se* operate as a revocation of the banker's authority to pay his cheques, and he may continue to do so until notice of the death reaches him.

WILLIAM WALLACE.

Bank Agent.—A bank agent is a person appointed to carry on the general business of a bank at a particular place as its accredited agent, with power to act in all matters connected with its legitimate banking business, his precise powers depending on the nature of his appointment. His position is therefore similar to that of any other mercantile agent with limited authority, and is governed by the general rules applicable to such an agent acting on behalf of a recognised principal. The bank will therefore be liable for anything wrongfully done or omitted by the agent while acting on its behalf and for its benefit, provided the agent was acting either in pursuance of express authority, or in the ordinary course of his employment as agent of the bank.

Inquiries are frequently made at bank agents as to the financial position of their customers, or by their customers as to the financial position of others. Such inquiries should be answered with the utmost caution, as careless or false information may give rise to claims against the bank and the agent at the instance of either the inquirer or the person inquired about.

Under Lord Tenterden's Act in England and the Mercantile Law Amendment Act in Scotland, a principal (*i.e.* the bank) cannot be sued for misrepresentations made by an agent as to the character or credit of a person, for the purpose of such person obtaining money or goods upon credit, unless the representation is in writing, signed by the principal, or (in Scotland) some person duly authorised by him. It is immaterial that the representations were made with a fraudulent design so long as they are not in writing (Clydesdale Bank [1896], A. C. 381). In England it has been held that the signature of an agent is insufficient to render the bank liable, even if it be expressly authorised or ratified (Swift, L. R. 9 Q. B. 309).

Apart from the provisions of these Acts, where the inquirer, through reliance on such information, incurs loss, an action will lie for such loss if the information was to the agent's knowledge untrue or misleading, or was given recklessly. If the giving of such information was within the scope of the agent's authority, and it was done for the bank's benefit, then the bank will be liable at least to the extent of the benefit received by it. If the giving of such information was beyond the scope of the agent's authority, he will be liable. The better opinion seems now to be that the making and answering inquiries as to the financial standing of their customers, or of persons with whom their customers desire to do business, is not, by the custom of banking, within the scope of the general authority conferred on a bank agent. Where the information on which the customer relied was supplied by his own bank on the written authority of another bank, the latter bank will or will not be liable to the inquirer according to the particular circumstances of the case, *e.g.* whether the information was given in the knowledge that it was to be communicated to the inquirer, or was a confidential statement intended for the other bank's private use (Hosegood, 36 L. T. 617, Swift, *supra*). As to the Scotch law on this subject, see Hockey, 1 F. 110, and Salton, 1 F. 119.

Where the inquiries are as to the position of the bank's own customer there is also this further limitation, that it is the bank agent's duty towards his customer to keep his affairs secret, unless there be some reasonable cause for disclosing them, such as if the banker be examined in a winding-up or called as a witness.

WILLIAM WALLACE.

Bank Book.—Each customer on opening an account is supplied by the banker with a bank book or pass-book, in which the banker enters from time to time each sum paid in or withdrawn, and also any other entries to the credit or debit of the customer. The bank book, therefore, if regularly entered up, will show at once the position of the customer with the bank. As to the legal effect of entries in the bank book, see "BANK ACCOUNT," *supra*.

The balance shown in the bank book will generally be found different from the bank account in the customer's own books. The discrepancy is caused by (1) cheques issued but not yet presented for payment; (2) cheques paid in but not cleared; (3) bills entered short, etc. When balancing, therefore, a reconciliation account should be prepared, in which these items are detailed.

In auditing books, the auditor should not be satisfied with the bank book entries alone, but should obtain a certificate from the banker. As the audit is always some time after the date of closing the books, he should have the bank book continued down so as to be able to check as many as possible of the outstanding items in the reconciliation account.

Bank of England.—The Governor and Company of the Bank of England are a corporation instituted by letters-patent under a special statute of 1694 (5 & 6 Will. and Mary, c. 20), the object of which was to grant certain duties to the crown, and also to enable the public to raise the sum of one and a half million pounds towards carrying on the war with France. The institution was projected by William Patterson, a Scotsman, and the whole authorised capital of £1,200,000 was subscribed within ten days of the opening of the bank, and lent to the government for the purposes specified. The 20th section of the Act provides that it shall be lawful for their Majesties, by letters patent, "to limit, direct, and appoint, how and in what manner and proportions, and under what rules and directions, the sum of £1,200,000, part of the said sum of £1,500,000, and the said yearly sum of £100,000, part of the said yearly sum of £1,400,000, and every or any part or proportion thereof may be assignable or transferable, assigned or transferred to such person or persons only as shall freely and voluntarily accept of the same and not otherwise: and to incorporate all and every such subscribers and contributors, their heirs, successors, and assigns, to be one body corporate and politic by the name of 'The Governor and Company of the Bank of England,' and by that name 'to have perpetual succession and a common seal, and to be able and capable in law to have, purchase, receive, possess, enjoy, and retain to them and their successors, lands, rents, tenements, and hereditaments of what kind, nature, or quality soever; and also to sell, grant, demise, alien, or dispose of the same: and to sue and implead, and be sued and impleaded, answer and be answered in courts of record or any other place whatsoever, and to do and to execute all and singular other matters and things, etc.'" Section 26 provides that "the corporation so to be made shall not borrow or give security by bill, bond, covenant, or agreement, under their common seal, for any more, further, or other sum or sums of money exceeding in the whole the sum of £1,200,000." By sections 27 and 28 it is forbidden to trade in goods. The 29th section provides "that all and every bill or bills, obligatory and of credit, under the seal of the said corporation, made or given to any person or persons, shall and may, by endorsement thereon, under the hand of such person, be transferred, and the person to whom they are transferred may sue in his own name." By 8 & 9 Will. III. c. 20, sec. 28 it is provided that

"during the continuance of the Corporation of the Governor and Company of the Bank of England, no other bank, or any other corporation, society, fellowship, company, or constitution in the nature of a bank, shall be created or established, permitted, suffered, countenanced or allowed by Act of Parliament, within this kingdom." These words, which, with some slight variation, are to be found in all subsequent statutes, conferred an exclusive privilege upon the Bank of England, and constituted an engagement on the part of Parliament that no other bank should in the future be allowed to interfere with its privileges. The next Act dealing with the Bank is 6 Ann. c. 22, sec. 9, which in the preamble states that, since the passing of the previous Act, "some corporations, by colour of the charters to them granted, and other great numbers of persons, by pretence of deeds or covenants, united together, have presumed to borrow great sums of money, and therewith, contrary to the intent of said Act, do deal as a bank, to the apparent danger of the established credit of the kingdom," enacts that from and after the 29th day of September 1708, during the continuance of the Governor and Company of the Bank of England, "it shall not be lawful for any body politic, or corporale whatsoever, erected or to be erected, other than the said Governor and Company of the Bank of England, or for other persons whatsoever, united or to be united in covenants or partnership, exceeding the number of six persons, in that part of Great Britain called England, to borrow, owe, or take up any sum or sums of money, on their bills or notes payable at demand or at any less time than six months from the borrowing thereof." This statute was evidently passed to secure more effectually the privileges intended to be granted by the Act of Will. III., but which had apparently been unsuccessful in accomplishing its intended object. But to prevent any doubts which might arise concerning the privilege or power of exclusive banking given by former Acts of Parliament to the Governor and Company, and to restrain other persons from banking, the Act 15 Geo. II. c. 13, declaring that the true intent and meaning of the Act was that no other bank should be erected, allowed, or established by parliament, re-enacted the provisions of the Act 6 Ann. c. 23, and declared that the Governor and Company should remain a corporation, *with the privilege of exclusive banking*. The intermediate Acts, which all speak of the privilege of exclusive banking, are all referred to in the preamble to the Act 39 & 40 Geo. III. c. 28, in which the words of 6 Ann. c. 22 are found repeated. In 1826 the Act 7 Geo. IV. c. 46 was passed, which curtailed the privileges of the bank and legalised the formation, under deeds of settlement, of banking co-partnerships consisting of more than six persons, provided they did not carry on business within the distance of sixty-five miles from London, and had not any of their establishments in London. The Act of 9 Geo. IV. c. 23 still further curtailed the privileges of the Bank, and provided that it should be lawful *for any person or persons carrying on the business of a banker or bankers* in England (except within the city of London or within three miles thereof), having first duly obtained a license for that purpose and giving security by bond, to issue, on unstamped paper, promissory notes for any sum of money amounting to five pounds or upwards, expressed to be payable to bearer on demand or to order at any period not exceeding seven days after sight or twenty-one days after the date thereof: *provided* such bills were drawn on a person or persons carrying on the business of a banker or bankers in London, Westminster, or the borough of Southwark, *or* that they were drawn by bankers at the place where they were licensed, or themselves or their co-partners, payable at any other town or place where such bankers were also duly licensed. But by 3 & 4 Will. IV. sec. 2 it

was enacted that banks consisting of more than *six* persons should not have the power to issue notes payable on demand in London or within sixty-five miles thereof; but were permitted by section 3 to carry on the business of banking within the limits recited in the previous Act *provided* they did not issue bills or notes at less than six months' date. (*B. of E.* v. *Anderson*, 1837, 3 Bing. N. C. 589, decided that, under this section, a partnership consisting of more than six persons and within sixty-five miles of London could not accept a bill of not less than six months' date drawn by a customer upon them.) By section 14 the Bank enjoys a monopoly in regard to the issue of bank notes and dealing as bankers in bills of exchange payable to bearer on demand, until the redemption by repayment of its loans to the Government.

The privileges of the Bank were finally defined and consolidated by the Bank Charter Act of 1844 (7 & 8 Vict. c. 32), which remains to this day its sanction and protection. From the original capital in 1694, when the bank was founded, the loan to the Government had gradually increased, till in the year 1844 it had reached the amount of £11,015,000, at which figure it still remains. It is curious, in these later days, to think of the Bank of England being involved in financial difficulties, yet within two years of its foundation it was so seriously embarrassed as to be obliged to suspend payment of its notes, and again, in 1797, a special statute was passed which required the bank to temporarily suspend payment of its notes in gold, results in both cases due to the financial operations of the government. It was not until 1821 that the Bank fully resumed its payments in specie.

The Bank Charter Act strictly limited its issue of notes, and separated the issuing and banking functions of the Bank, a different system of account and staff of officers being allocated to each department. The Bank was empowered to issue notes to the value of £14,000,000 (the amount of the Government loan of £11,015,000 above mentioned, and certain other securities incidental to the lapsed note-issue of other banks amounting to £3,000,000), against which securities to that value, including the Government loan; were to be transferred to the issue department, with power, in the event of other banks ceasing to issue notes, to increase securities in the issue department and to issue additional notes in the proportion of two-thirds of the amount of the authorised issue of such lapsing bank. Since 1844 there has been a very considerable series of lapses in the note issue of other banks, and by this means the authorised circulation of the Bank of England has increased to nearly £18,000,000. By the Act, any other bank which on 6th May 1844 was lawfully issuing its own notes, and has done so continuously since then, may continue to do so, but its issue is limited to the average amount of its issues in October 1844. The Act further contains a prohibition against any one, other than a banker who on 6th May 1844 was lawfully issuing his own notes, making or issuing bank notes in any part of the United Kingdom in the future, and limits the issues of all then existing banks to an average of the circulation of each bank for the twelve weeks prior to 12th April 1844. It further provided that joint-stock banks in London, or within the sixty-five mile radius, might accept or indorse bills not payable to bearer on demand for any period, instead of dates of not less than three months as formerly. The Act also confirms all the powers, authorities, franchises, privileges, and advantages conferred upon it by 4 Will. IV. and all subsequent Acts, subject to redemption on repayment by Parliament to the bank of the sum of £11,015,000 and arrears and interest. The Bank Act of 1892 makes provision for the grant of a supplementary charter to regulate the internal affairs of the Bank, and by the Country Bankers Act of 1826, sec. 15, it was authorised to open and carry on branch banks, all

notes issued at such branches being payable in coin at the branches as well as in London.

The Bank of England is managed by a governor, a deputy-governor, and twenty-four directors. The offices of governor and deputy-governor are given in rotation, the deputy-governor always succeeding the governor, while the oldest director who has not held office usually succeeds the deputy-governor. As a rule, about twenty-five years elapses between a man's first appointment as director and his succession as governor. Young men, comparatively speaking, are therefore invariably chosen as directors, and as the office is one of very great prestige, there is a very keen and widespread ambition to be elected a director. By old usage, the directors cannot themselves be by trade bankers, that is, partners in a concern trading as a bank. The governor and deputy-governor form the executive, and change almost invariably every two years. Among the functions which it executes is fixing the rate of interest (see "BANK RATE"); managing the banking business connected with the national debt and the transfer of government securities under the National Debt Act of 1870; and holding the cash reserves of the other banks of the country. "It has practically assumed the position of protector of our financial system, and as such it moves the bank rate, circulates gold or withdraws it from circulation, lends money to the public, and by these means or others aids the money market and general credit in times of panic and crisis. As a private bank it opens accounts with the public; gives out cheques in books, and permits cheques to be drawn upon it for any sum not less than £5; pays bills payable at it; acts as a custodian of valuables, and receives dividends by power of attorney." No one has a right to inspect its registers unless he can show a *bona fide* interest in some unclaimed stock (*R.* v. *B. of E.*, 1891, 1 Q. B. 785). It must buy from the public all gold bullion offered in exchange for its notes at the price of £3 : 17 : 9 per ounce of standard gold. As to its duties in relation to transfer of stock, see Humberstone, 1836, 2 Y. and G. Ex. 209; Prosser, 1872, L. R. 13 Eq. 611; 33 & 34 Vict. c. 71, sec. 73.

Bank Note.—A bank note is the promissory note of a banker, payable to bearer on demand. As such it is subject to the rules as to presentation, dishonour, material alteration, negotiation, loss, or theft applicable to promissory notes (Bills of Exchange Act 1882, secs. 83 *et seq.*)

The privilege of issuing bank notes now belongs exclusively to the Bank of England, and such banks as were lawfully issuing their own notes in 1844. It is forbidden to issue Bank of England notes, or to circulate in England Scotch or Irish notes of less value than £5. In Scotland the notes in circulation are £1, £5, £10, £20, and £100.

Except by the bank itself, Bank of England notes are legal tender in England for all sums above £5. With this exception, bank notes are not legal tender; but Scotch notes in Scotland, and notes of county banks in England, are sufficient tender if not objected to by the recipient at the time. Both in England and Scotland bank notes pass by mere delivery, and are practically treated as cash.

The alteration of a bank note in a material particular destroys it as such (*Suffell* v. *Bank of England*, 9 Q. B. D. 555). But a holder in due course of notes other than those of the Bank of England may, if the alteration is not apparent, recover their amount (Bills of Exchange Act 1882, sec. 64).

A person transferring a note for value without endorsation warrants the

transferee that it is genuine, neither stolen nor forged, and so far as he is aware of full value. The payee, therefore, of a forged note, or a note rendered invalid by alteration, although the bank may not be liable thereon, can recover from the payer the consideration given therefor as money paid in mistake. A stolen note, or a note fraudulently obtained, must be paid by the issuing bank on presentation to any holder who is not shown to have acquired it dishonestly, but if the note has been stopped payment may be delayed for such reasonable time as may be necessary to make inquiry. Mere carelessness in taking a stolen note, or even forgetfulness to refer to a list of stopped notes containing the particular note, will not prevent the receiver recovering payment. But the existence of circumstances such as should have excited suspicion, and a deliberate refusal to make inquiry, may disentitle the holder to recover payment (*Solomons* v. *Bank of England*, 13 East, 135).

If notes, other than those of the Bank of England, are transferred without endorsement and dishonoured, the payee cannot recover the consideration from the payer unless the transfer was conditional on their being met, as where they are cashed to oblige the payer, or are given for an antecedent debt. If the holder of the notes does not promptly present them or circulate them he cannot recover from the person from whom he received them. In Scotland the amount of bank notes can be recovered by summary diligence in the same way as bills. Where a note has been lost the Court may require the issuing bank to pay it on an indemnity being given.

If a note is sent in two halves the receipt of the first half confers on the recipient no right to payment; and the sender, so long as he retains the second half, may demand the first back.

WILLIAM WALLACE.

Bank Rate.—The bank rate is the rate of interest fixed by the governor and directors of the Bank of England, and varying periodically according to market fluctuations, at which the bank is willing to grant loans for a period not exceeding seven days, and as a rule is a fraction higher than the actual value of money in the market for the time being. The causes of the fluctuation of the rate are many and varied, and are the result of strong, complicated, and ever-working forces, the most potent of which may be briefly indicated here. Any increase in the trade or commerce of a country necessarily involves an increase in the amount of capital required, while a decrease in the volume of trade lessens the amount of capital necessary. The trade of this country, as of all modern civilised states, is conducted almost entirely upon credit, and it is in accordance with the economic laws of supply and demand that loanable capital, like any other commodity, goes where there is most demand for it. Consequently, so long as our credit remains good, whenever the rate of interest shows that money may be lent profitably, money flows from abroad into the money market here, and conversely, when the rate of interest is low, money is withdrawn to seek a more profitable outlet. Obviously, then, the value of money in the market is dependent on the fluctuations in the volume of trade in the country, money being "dear" or scarce when the requirements of trade demand a large and increasing capital, and "cheap" or plentiful when, owing to the slackness of trade, a large amount of capital is set free. The ultimate depositary of the credit of the country is the Bank of England, since, broadly speaking, no other bank in London or out of it holds any considerable sum in hard cash or legal tender beyond what is required for

its immediate daily needs. Therefore, ultimately, on the maintenance of the reserve in the Bank of England depends the solvency or insolvency of the country. One of the most important of the functions, therefore, exercised by the directors of the Bank of England is the maintenance of a reserve sufficient to meet sudden and unexpected demands, either from abroad, to meet foreign payments of large and unusual foreign debts, or from home, to meet sudden apprehension and panic arising in any manner, rational or irrational. To maintain that reserve the steady use of an effectual instrument is necessary, and that instrument is provided by the raising of the bank rate. Where the value of the imports of the country exceeds that of the exports, the difference in favour of the foreigner must ultimately be paid in bullion, and the bank rate rises; but if large sums of money are paid into this country as payment for excess of exports, or as repayments of loans or for interest, the bank rate correspondingly decreases. Accordingly, if the bank rate be raised, gold is attracted from abroad, and the coffers of the Bank of England, depleted by the withdrawal of bullion in payment of excess of imports, are replenished; while a lowering of the rate of interest makes capital susceptible to foreign attraction. So that, ultimately, it will be seen, the causes of the fluctuation in the rate are affected by and dependent on the amount of the reserve which the bank holds. When the reserve is in jeopardy, the bank rate is raised; when the reserve tends to unduly increase, the rate falls. The bank takes care, before raising the rate, to make the raising effective by borrowing largely on the market and thus depleting it of its supplies. It will be apparent from what has been said that a high rate acts as a restraint on trade, since it prevents the utilisation of capital on loan from the bank and stops speculation, while a low rate has of course a contrary effect. The bank rate controls the interest on deposit accounts, which is generally 1½ per cent below it.

Bank Shares.—All contracts for the sale, purchase, or transfer of shares or stock in a joint-stock banking company are void unless they set forth in writing the distinctive numbers of the shares or stock, or, if there are no such numbers, the names of the registered holders. It is a misdemeanour to insert false names or numbers (Leeman's Act). These provisions as to inserting numbers, etc., are regularly disregarded on the Stock Exchange, but this custom has been declared illegal (Neilson, 9 Q. B. D. 546).

Bankers' Books Evidence Act 1879 (42 & 43 VICT. c. 11).—Subject to the provisions of the Act, a copy of any entry in the books of a banker—embracing ledgers, day books, cash books, account books, and all other books used in the ordinary business of the bank—is, in all legal proceedings,—an expression meaning any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration,—received as *prima facie* evidence of such entry and of the matters, transactions, and accounts therein referred to. The Act is not confined to the banking accounts of the pursuer and defender, but empowers the Court to order inspection of entries in bankers' books kept in the names of other persons (*Howard* v. *Beall*, L. R. 23 Q. B. D. 1). No notice of the application to order inspection of a third person's banking transactions need be given to such third person, but in such a case the Court may require evidence of the *bona fides* of the application and of the materiality of the inspection (*Arnot* v. *Hayes*, L. R. 36 Ch. D. 731).

It has been decided that the effect of the Act is to make copies of entries in the books of a banker admissible against any one, and

hence that copies of entries in the books of the bankers of a defendant are evidence against the plaintiff (*Harding* v. *Williams*, L. R. 14 Ch. D. 197).

Before the copy of an entry in a banker's book can be received in evidence the following must first be proved—(1) that the book was, at the time of the making of the entry, one of the ordinary books of the bank; (2) that the entry was made in the usual and ordinary course of business; (3) that the book is in the custody or control of the bank; and (4) that the copy has been examined with the original and is correct. Such proof in respect of items 1, 2, and 3 may be given by a partner or officer of the bank, and in respect of item 4, by some one who has examined the copy with the original. The proof may be either oral or by an affidavit sworn before any commissioner or person authorised to take affidavits. In practice the necessary proof on the four points specified is given by one officer of the bank and is mostly by affidavit. A form of affidavit is appended to this article.

Unless a bank is a party to the proceedings—in which case its position is that of any other litigant, and production of its books can competently be called for—production of the books of a bank, the contents of which can be proved under the Act, cannot be compelled, nor can an officer of the bank be compelled to appear as a witness to prove the matters, transactions, and accounts recorded in the books unless by order of a judge made for special cause. The expression "judge" means, with respect to England, a judge of the High Court of Justice; with respect to Scotland, a Lord Ordinary of the Outer House of the Court of Session; and with respect to Ireland, a judge of the High Court of Justice in Ireland.

Inspection of Bank Books may be ordered.—On the application of any party to a legal proceeding, a Court or judge—including the Court, judge, arbitrator, persons or person before whom a legal proceeding is held or taken—may order that such party be at liberty to inspect and take copies of any entries in a banker's books for any of the purposes of such proceedings. An order under this provision may be made either with or without summoning the bank or any other party, but must be served on the bank three clear days (Sunday, Christmas Day, Good Friday, and any bank holiday are excluded from the computation of time) before the same is to be obeyed, unless the Court or judge otherwise directs.

Form of Affidavit.—

At the day of 19 . In presence of A. B., one of His Majesty's Justices of the Peace for , compeared C. D., cashier (*or otherwise, as the case may be*) and one of the principal officers of the Bank, who being solemnly sworn and examined, depones that the foregoing is a copy of the account kept in the ledger of the said bank at in name of from the day of until the day of when the said account was closed (*or as the case may be*), that the said ledger was, at the time when the entries in the said account were made, one of the ordinary books of the bank, and the said entries were made in the usual and ordinary course of business, and that the said ledger is now in the custody of the bank; depones also that he has examined the foregoing copy account with the original and found it correct. All which is truth as the deponent shall answer to God.

(Signed) C. D.
„ A. B., *J.P.*

ALLAN M'NEIL.

Banker's Lien.—A banker's lien or right of retention, differing in extent in England and Scotland, may be defined as a general right to retain all unappropriated securities belonging to his customer, which are lawfully in the possession of the banker, and subject to his control, for securing his balance on general account, but not for sums due to the banker in any other capacity (*Brandao* v. *Barnett*, 12 C. and F. 787; *Jones* v. *Peppercorn*, 28 L. J. Ch. 153). The general rule is subject to this exception, that if a security is lodged with a banker for the purpose of securing a particular debt, or for any specific purpose inconsistent with a right of general retention, the rule does not apply, and the security can only be held for the particular debt (*In re Bowes, Earl of Strathmore* v. *Vane*, 33 Ch. D. 586). On the other hand, the specific purpose must be clearly ascertained, or otherwise the banker is entitled to hold the securities until the whole sums due to him are paid. The generally accepted interpretation of the term negotiable instrument is "an instrument the property in which is acquired by any one who takes it *bona fide* and for value, notwithstanding any defect of title in the person from whom he took it, from which it follows that an instrument cannot be negotiable unless it is such and in such a state that the true owner could transfer the contract or engagement therein by simple delivery of the instrument without any other legal formality."

There is a material difference between the law of England and that of Scotland with regard to the extent of a banker's lien. In England the right is founded on the usages of trade, is judicially recognised as part of the law merchant (*Brandao* v. *Barnett, supra*), and confers on a banker the right to retain not only negotiable instruments, but such securities as title-deeds to heritable or real property (*London and County Banking Co.* v. *Ratcliffe*, L. R. 6 App. Cases, 722; *In re General Provident Assurance Co.*, L. R. 14 Eq. 507), share certificates in name of the bank's customers (*Leese* v. *Martin*, L. R. 17 Eq. 224), and policies of insurance (*In re Bowes, Earl of Strathmore* v. *Vane, supra*), and generally to all securities whether negotiable or not (*London Chartered Bank of Australia*, 1889, 4 App. Cases, 413; *In re Bowes*, 1886, 33 Ch. D. 586). In Scotland, on the other hand, the rule is founded on the general principle that every agent has a lien or right of retention against his principal for the balance due to him, the precise extent or nature of the lien being determined by the nature or character of the agency. A banker's lien is there held only to extend to unappropriated *negotiable* instruments such as bills, bonds, or share warrants payable to bearer. The right of lien has never been applied to securities held by a banker, and constituted by a registered title such as a duly recorded disposition of his customer's heritable property or a duly registered transfer of shares. In these cases the banker obtains a title of property, and hence there cannot be a lien, for a lien is only possible over the property of another (*Hamilton* v. *Western Bank*, 1856, 19 D. 152; *National Bank* v. *Dickie's Tr.* 1895, 22 R. 740). In neither England nor Scotland has a banker a right of lien over plate deposited with him for safe custody.

Where a customer keeps two accounts the banker is entitled to retain a sum standing at the credit of one account as against a debit balance due on the other account (*In re European Bank*, 1872, L. R. 8 Ch. 41), or as a set-off against any other debt due to him by the customer. This, however, can only be done where the debt is duly constituted, and can at once be placed to the debit of the account. In a Scotch case, where a customer of a bank was at the date of his death indebted to the bank, and his executors in administering his estate paid into the bank to the credit of an account opened in their names as executors a sum which practically

balanced the sum due by the deceased customer, it was held, on the sequestration of the deceased debtor's estate, that the bank were not entitled to retain the amount lodged by the executors in satisfaction of their debt (*Gray's Trs.* v. *Royal Bank*, 1895, 23 R. 199). A banker is not entitled to retain his customer's money in security of a claim in regard to which there is nothing more than a presumption of liability, nor in security of a claim which is repudiated by the customer. In one case a customer, having a balance to his credit on account current, issued a cheque on the 21st October. On 22nd October the bank intimated to him that they intended to retain any money at his credit pending a settlement of a claim by them, and requested him not to pass any further cheques. The claim referred to was in respect of a bill for which the bank contended they had reasonable grounds for believing the pursuer was liable to them. The bill, the bank said, was accepted in his name by his brother, who had power to sign cheques for the pursuer, and had admittedly a general management of his pecuniary affairs. On the other hand, the pursuer stated that the bill was signed by his brother without his knowledge or authority, and that he knew nothing of its existence until a demand was made for payment. On receiving the above intimation from the bank the customer replied that he had drawn the cheque in question prior to receipt of their letter, and that if they dishonoured it his business reputation would probably be injured. The bank dishonoured the cheque, and in an action against the bank the Court found them liable in damages to the customer for injury to his credit (*King* v. *British Linen Co.* 1899, 1 F. 928).

It has been decided that where a deposit receipt has been issued in favour of "A. and B., payable to either or the survivor," the obligation thereby undertaken by the bank is, when not legally interpelled from paying such as by arrestment or notice from the other party to the receipt, to pay to either of the parties the amount represented by the receipt on delivery of it endorsed. The bank is not entitled in a question with, say A., who produces the receipt endorsed by him, to retain the sum due in security of a claim against B., and that whether it is or is not the fact that the money is the property of B. (*Anderson* v. *North of Scotland Bank, Ltd.*, 1901, 4 F. 49).

Essentials to Constitution of Lien.—To enable a banker to exercise his right of lien over the property of his customer it is essential—

1. That the property of the customer be actually in the possession of the banker or under his control, and that such possession has been obtained in the usual and ordinary course of business. Thus there is no right of lien over securities left with a banker by mistake or accident, nor over securities contained in a box, the key of which is retained by the customer (*Leese* v. *Martin*, L. R. 17 Eq. 224). The right of lien ceases with the loss of possession. It is essential that the property over which the right of lien is sought to be exercised belongs, or the bank has right to assume belongs, to the customer (*Farrer and Routh* v. *N. B. Banking Co.*, 1850, 12 D. 1190; *Athwood* v. *Kinnear and Son*, 1832, 10 S. 817). Hence where property is according to the law merchant negotiable, and if passed over even by a person who has no title, such as a thief or finder, to one who receives the property for value in good faith and without knowledge of the want of title in the person from whom he received it, a good title is made by such transference. It has been decided that a banker, who in good faith advances money upon a negotiable security, obtains a perfectly good title to the property to the extent of his advances, and that although the person from whom he took it was not the true owner thereof. Mere

negligence apart from express knowledge on the part of the transferee to avail himself of the means at his disposal to detect the bad title of the transferor, cannot be pleaded as a defence to an action on the instrument by the transferee. Consequently, the true owner of the securities cannot recover possession of his property unless and until he pays the amount for which the securities were pledged (*London Joint Stock Bank* v. *Simmons* [1892], A. C. 201; *Mutton* v. *Peat* [1900], 2 Ch. 79). On the other hand, if the banker knows or has good reason to believe that the securities are not the property of his customer, he cannot in a question with the true owner thereof retain them on the ground of lien. In one case a bill-broker, who was indebted to a bank, sent a bill to be discounted accompanied by a letter, which showed that he was acting for a third person; it was decided that the bank could not retain the proceeds as against the debt due to them by the bill-broker (*Farrer and Routh, supra*). In the case of stockbrokers, bankers generally assume that when they apply for advances against stocks they are acting on behalf of clients. Therefore, while a broker's application for a loan on the security of stocks may import a representation that he has authority to pledge them for the amount he proposes to borrow, and to that extent give a good security to the lender, it cannot lead to the inference that they are his own property, or that he has power to give the bank a title to retain them for other advances than those for which he actually undertakes to pledge them (*Earl of Sheffield* v. *London Joint Stock Bank*, L. R. 13, A. C. 333).

2. That the property over which the right of lien is claimed has not been deposited with the banker for a specific purpose inconsistent with such right. There is, however, a presumption that the custody of securities belonging to a customer who is indebted to a bank gives the bank a right of lien over such securities, and, to overcome the presumption, the terms on which the securities are deposited must be clear and specific. If the deposit of securities when made is expressed to be for safe keeping, and there is nothing to qualify that expression, such a deposit is inconsistent with a right on the part of the banker to hold such securities for the repayment of advances. The question always is, What were the terms of the contract under which the deposit was made? Although the banker may have given a safe-custody receipt for the documents, such receipt in itself is not conclusive evidence of the contract. The contract may have been concluded by a formal deed, by missives, by correspondence, or even by verbal agreement, or the safe-custody receipt may be one of several sources from which the terms of the contract fall to be gathered. For example, the receipt may fall to be read simply as a letter in a correspondence, or as a letter or telegram passing in the course of communications partly written and partly verbal. The contract of deposit being a consensual contract capable of being constituted verbally and proved by parole evidence, the whole communications between the parties are considered in ascertaining the true terms of the contract. Thus the terms of a safe-custody receipt which bore that certain bearer bonds against which advances were concurrently made had been deposited "for safe keeping on your account and subject to your order," and not for safe keeping *only* or *exclusively*, did not instruct any special agreement of parties such as would exclude the general right of retention which the custody of the bonds gave the bank, especially when supported by the actings of parties (*Jones* v. *Peppercorn*, 28 L. J. Ch. 138; *In re European Bank*, Agra Bank Claim, 1872, L. R. 8 Ch. App. 41; *Robertson's Tr.* v. *Royal Bank*, 1890, 18 R. 12; *Alston's Tr.* v. *Royal Bank*, 1893, 20 R. 887).

3. That the possession of the property has been obtained by the banker in his capacity as banker, and not, *e.g.*, in that of custodier, as where plate is deposited with him for safe custody.

4. That the customer is in debt to the bank. A banker with whom a customer opens several accounts has a lien upon all the accounts for the balance due him. The separate accounts are kept merely for convenience of book-keeping, and the banker is entitled to recast his accounts and treat the whole as one (*In re European Bank*, 1872, L. R. 8 Ch. 41), except—(1) where there is a special agreement inconsistent with a right of general lien, (2) where specific property of a third person has been paid to the bank, and (3) where the bankers have notice that when a customer draws upon a particular account it is a fraud or breach of trust (*Greenwood Teale* v. *Williams, Brown, and Co.* 1894, 11 T. L. R. 56). If an account is in plain terms headed in such a way that a banker cannot fail to know it to be a trust account, the balance standing to the credit of that account will, on the bankruptcy of the person who kept it, belong to the trust irrespective of the amount due by him individually to the bank (*ex parte Kingston*, 1871, L. R. 6 Ch. Appeals, 632). When payments are made to the banker to be placed to the credit of any account, the rule is that under ordinary circumstances a person, be he banker or other, who takes money from his debtor in discharge of a debt is not bound to inquire into the manner in which the person so paying the debt acquired the money with which he pays it. However that money may have been acquired by the person making the payment, the person taking that payment is entitled to retain it in discharge of the debt which is due to him. Even if a person receiving money knows that such money has been received by the person paying it to him on account of other persons, that of itself is not sufficient to prevent the payment being a good payment, and properly discharging the debt due to the person who receives the money. No doubt if the person receiving the money has reason to believe that the payment is being made in fraud of a third person, and that the person making the payment is handing over in discharge of his debt money which he has no right to hand over, then the person taking such payment would on ordinary principles not be entitled to retain the money (*Thomson* v. *Clydesdale Bank, Ltd.* [1893], A. C. 282). Where a debtor is either bankrupt or is plainly unable to meet his obligations, *vergens ad inopiam*, the banker's lien does not in the absence of special agreement cover debts which have not yet become due. Thus a bank has no right to retain a sum of money lying to a customer's credit on current account as security for a bill which has not yet become due (*Bower* v. *Foreign and Colonial Gas Co.*, 22 W. R. 740; *Ireland* v. *North of Scotland Bank*, 1880, 8 R. 215), and the fact that the bank intend to apply for the sequestration of the estates of the customer does not justify a refusal to honour a cheque drawn on the account (*Ireland, supra*).

Lien over Bills.—The question of lien does not arise in the case of bills discounted by a bank, for by discounting the bill, either by paying cash for it or by crediting his customer with its amount, the banker has bought the bill and so becomes the owner thereof, the reason being that lien cannot exist except over the property of another. A banker has, however, a general lien over all bills not specifically appropriated and lodged by a customer for collection. He has no right of lien over bills which have been endorsed to him for the special purpose of negotiation. Where the acceptor of a bill on the drawer's advice presented the bill to a banker for discount, it was held that the banker had no right to retain the bill for a debt due

by the presenter (*Haig* v. *Buchanan*, 1823, 2 S. 412; *Matheson* v. *Anderson*, 1822, 1 S. 486). This lien being general, extends to all the bills and paper of his customer, so that to entitle the customer to demand return of any one he must have paid up the whole balance due. A banker has no lien over bills deposited with him simply for safe custody (*Leese* v. *Martin*, L. R. 17 Eq. 224), nor over bills left with him to be discounted, but which he has refused to discount, as he is bound as a rule either to discount the bill or return it, and is not entitled in a question with other creditors or the customer to retain it undiscounted, and claim a lien over it for a general balance (*Borthwick* v. *Bremner*, 1833, 11 S. 716, and 12 S. 121; *Glen* v. *National Bank*, 1849, 12 D. 353). An averment that a bill has been endorsed to a banker for discount, and not by way of security, can only be proved by the writ or oath of the banker (*Glen*, *supra*). Bills paid to a banker at a date long prior to their becoming due, and as a fund of credit on which advances on other and smaller bills are made during their currency, have been held to become the property of the bank in respect that full value for them has been given by way of advances (*Patten* v. *Royal Bank*, 1853, 15 D. 617). Bills remitted to a banker for a special purpose which has not been fulfilled remain the property of the remitter, and are subject to the banker's right of lien. So bills remitted to meet other bills which have not yet become due, or which are to be retained by the banker till they fall due, the customer being meanwhile permitted to draw against them or for deposit, remain the property of the customer, and are subject to the banker's right of lien.

Lien over Bank Stock.—By the terms of their constitution banking companies have usually a lien over their own stock in security of advances made to their registered proprietors. Unless the bank have notice that the stock, although registered in the name of their debtor, is in reality trust or agency property, the bank's lien is effectual although the radical right to the stock is in third persons (*Bradford Banking Co.* v. *Briggs*, 1886, 12 App. Cases, 29; *Burns* v. *Lawrie's Trs.* 1840, 2 D. 1348). In the case of banking companies registered under the Companies Acts, where the regulations of Table A, scheduled to the Act of 1862, are adopted as the articles of association, the company have power "to decline to register any transfer of shares made by a member who is indebted to them" (Table A, clause 10). The power thus conferred, while enabling the company to refuse to register a transfer, does not enable them to sell the shares in satisfaction of the debt due to them. Further, it has been held that the bank can only decline to register a voluntary transfer, and hence on the bankruptcy of the registered proprietor his trustee, who claims upon a legal and not a voluntary transfer, is entitled to be placed on the register, and so enabled to sell the shares to the exclusion of the bank's right of lien. It is, however, competent for a company to alter or exclude the above provision, and to declare, as is now usually done, that the shares belonging to, and all dividends and profits from time to time payable to a proprietor, shall be subject to a lien thereon in favour of the company, in respect of any debt due to the company, and empowering the company to have the lien made available by the sale of such shares at such time, and to such persons, and for such price as the company think fit.

Power of Banker to sell Subjects over which Lien extends.—In England the law is that a banker has power to sell the subjects over which he has a right of lien, and to apply the proceeds in extinction or reduction of the debt due to him (Smith's *Mercantile Law*, 10th ed. 697, note *a*; Grant's *Bankers and Banking*, 4th ed. 250). No similar right in the absence of

agreement to the contrary exists in Scotland (*Robertson's Tr.* v. *Royal Bank*, 18 R. 12, at p. 20). All the banker can do in such circumstances is either to retain the securities or to apply to the Court for power to sell.

When the lien extends over bills lodged for collection and endorsed, the banker is bound to duly negotiate them, and is entitled to apply the proceeds in reduction or payment of any sum due to him by the person who lodged the bills. But if the bills are not endorsed it would seem that the banker has only the right to retain and not to realise them (Bell's *Comm.* ii. p. 23).

ALLAN M'NEIL.

Banking.

HISTORY.—As early as the eleventh and twelfth centuries the practice of banking had reached a highly developed state in the Italian cities and afterwards in the Low Countries; but if we except the usurers and the money-changers, we find no mention of it in England until the time of the Stuarts. In a pamphlet published in 1676 we find it stated: "Much about the same time, the goldsmiths (or new-fashioned bankers) began to receive the rents of gentlemen's estates remitted to town, and to allow them and others who put cash in their hands some interest for it. . . . This was a great allurement for people to put money in their hands, which would bear interest till the day they wanted it; and they could also draw it out by one hundred pounds, or fifty pounds, etc., at a time as they wanted it."

This was the beginning of the system of credit which is now the foundation of all modern business as well as of banking. But national public credit was, as yet, but precarious in the extreme. The king was still supposed to live "of his own," and his debts were secured by his personal good faith alone. When, therefore, Charles II., to whom the goldsmiths had lent large sums, closed the Exchequer in 1672 and confiscated £1,300,000 of the latter's money, public credit received a rude shock. The accession of William III., however, witnessed an entire change in this respect, and the personal sovereignty of the monarch gave way finally to the present system of parliamentary control and responsibility. William's foreign ambitions forced him into the hands of the Whigs, to whom he looked for his supplies. "They shall never be losers who trust to a parliamentary security," said he in a speech from the throne on 30th December 1701. When, therefore, Montague, the Chancellor of the Exchequer, adopted in 1694 the expedient suggested by a Scotsman named Patterson, of granting special banking facilities to a company in return for a loan to the State, the newly created public confidence was shown by the rapidity with which the capital of the "Bank of England" was subscribed. The establishment of the Bank of England was the foundation of our modern financial system; and by means of familiarising the public with the use of credit in productive enterprise, it opened up roads to wealth hitherto undreamt of. The bank was enabled to lend money at a much lower rate of interest than that charged by the goldsmiths, owing to their larger capital and the remunerative terms of their contract with the Government, and often discounted bills at 4 per cent instead of the 6 or 8 charged by their rivals.

But we must be careful to notice that although the bank received deposits and discounted bills, it was to their note issue that they attached primary importance and most jealously guarded. Therefore, in 1708, at one of the periodical renewals of their charter, we find a clause inserted (7 Anne, c. 7), granting them a monopoly in this respect: "During the

continuation of the said corporation of the Governor and Company of the Bank of England, it shall not be lawful for any body politic or corporate whatsoever . . . *exceeding the number of six persons*, in that part of Great Britain called England, to borrow, owe, or take up any sum or sums of money on their bills or notes, payable at demand, or at a less time than six months from the borrowing thereof."

This clause, which, be it noted, did not extend to Scotland, had a far-reaching effect, and put great obstacles in the way of the evolution of a class of powerful and responsible banks in England. Owing to the importance generally attached to the issue of notes, a conception arose that it was not possible to found other banking companies possessing adequate capital with any chance of success, so that for more than a century the Bank of England was without a rival except for private banking firms. Several of these were highly respectable houses, and have survived to the present day, notably Messrs. Child and Messrs. Hoare, both older than the Bank of England; but many of them possessed utterly inadequate resources, and collapsed with the first strain thrown upon them. The Bank of England survived all the panics of the eighteenth century without much difficulty, until the troubled times of the Napoleonic era; then in 1797, under the double stress of a drain set up by the country bankers, caused by fears of a French invasion, and the constant calls made upon its resources by Pitt, it was reduced to extremities, and the Government found it necessary to step in and forbid payments in cash except under certain rigid restrictions. The result was that gold was rapidly driven out of the ordinary channels of circulation, and the standard of value was no longer gold but a fictitious paper one. The curious phenomenon was experienced of a rise in the market price of gold bullion to £4:13s. per oz., that is to say, while gold was coined at the rate of £3 : 17 : 10½ per oz., the market price of an ounce of gold was £4 : 13s. The difference between these two prices was the measure of the depreciation of the paper currency—Bank of England and country bank notes. For a while the Government refused to admit the existence of this depreciation, and the celebrated report of the Select Committee of the House of Commons in 1811, commonly known as the "Bullion Report," which clearly showed the extent of the evil, was thrown out by a large majority of the House. This report was a masterly and forcible exposition of the principles which should govern the issue of a paper currency, and the errors in it are wonderfully few considering the fluctuating state of the general opinion on the subject. Succeeding events thoroughly justified the position taken up by its authors, and a violent contraction of the paper issues in the years 1814-16, owing to an acute monetary panic, restored the market price of bullion to its normal level. During the years 1821-23 payments in cash were gradually resumed, and owing chiefly to the exertions of Mr. Robert Peel the old standard rate of £3 : 17 : 10½ per oz. was maintained in defiance of a minority who proposed "that the Mint price of gold be altered to correspond with the market price" (Amendment of Lord Lauderdale to 59 Geo. III. c. 49).

The Bank of England had reason to congratulate itself on the way it had come through the ordeal of the suspension. It learnt the lesson that an unlimited issue of paper which is not payable in gold on demand cannot retain its value for long, however much it may be bolstered up by legislative enactment, and it learnt its lesson well. England has never since that time experienced the evils of an inconvertible paper currency, although most of her neighbours have, from time to time, succumbed to temptation and tasted the sweets and bitters of such a course. But although the Bank

of England had retrieved its reputation, so much can hardly be said of the country banks. Each recurring panic absorbed its tale of victims from their ranks, and the want of more reliable provincial banks forced itself on public attention. With the intent to remedy the evil the Bank of England was recommended by the Government to open branches in the provinces, and a start was made at Swansea, Gloucester, and Manchester. Negotiations were opened with the Governors of the Bank to induce them to modify the monopoly conferred on them by the charter of 1708, and an Act was passed (7 Geo. IV. c. 46) allowing the establishment of banks with more than 6 partners, provided they had no office within 65 miles of London, and their notes were not payable within such a radius. This was followed in 1833 by an explanatory clause, inserted in 3 and 4 Will. IV. c. 98, permitting the establishment of joint-stock banks in London without the privilege of a note issue. This significant clause marks a great change in the character of English banking. From this time forward the function of issuing notes dwindles into insignificance compared with the practice of deposit banking. What may be called the "habit" of banking now gained ground rapidly, and the local bank superseded the old stocking among all classes of Englishmen. England had, since the closing decades of the eighteenth century, assumed the position of the leading industrial nation of the world. The great business centres of the North and Midlands of England were being opened up, and England needed capital. This was largely supplied by the deposits of the new banks; deposits perhaps small individually, but mounting up in the aggregate to many millions. In no country of Europe has this "habit" of banking taken such firm root, and it must be reckoned as an important factor in our national development. Many of the leading joint-stock banks of to-day were the direct outcome of this clause of the Act of 1833, notably the London and Westminster Bank founded in 1834, the London Joint Stock Bank in 1836, and the Union Bank and the London and County Bank in 1839.

Bank Charter Act 1844.—This revival in banking was followed by an attempt to impose such legal restrictions on the Bank of England and the country banks as should prevent the occurrence of the monetary crises which caused such devastation at intervals, and also should ensure the convertibility of their note issues. These restrictions were embodied in the Bank Charter Act of 1844, introduced by Sir Robert Peel, and generally known as the "Bank Act." That the supporters of the bill had this twofold object in view is undoubted. Peel's own words, when the House went into Committee on the bill, are decisive as to his hopes of preventing these panics: "Some apprehend," says he, "that the proposed restrictions upon issue will diminish the power of the bank to act with energy at the period of monetary crises and commercial alarm and derangement. But the object of the measure is to prevent (so far as legislation can prevent) the recurrence of those evils from which we suffered in 1825, 1836, and 1839. It is better to prevent the paroxysm than to excite it and trust to desperate remedies for the means of recovery." The other important point to observe about this measure is that the dangers arising from improvident speculation and inflated prices are attributed by the great majority of the speakers to the action of bank notes alone, to the entire exclusion of such other instruments of credit as cheques and bills of exchange. The most important clauses of the Act are as follows:—

(1) The issue department of the Bank of England was to be kept wholly distinct from the banking department.

(2) The issue department was allowed to issue notes to the value of

£14,000,000 on securities ; all notes issued in excess of this amount were to be secured by the deposit of bullion to an equal amount in the issue department.

(3) Of the bullion deposited in the issue department as security for notes, not more than one quarter was to consist of silver.

(4) Any one may demand notes from the issue department in exchange for gold, at the rate of £3 : 17 : 9 per oz.

(5) If at any time the authorised issue of any bank shall lapse in accordance with the provisions of this Act, the Bank of England may increase the securities in the issue department against which notes are issued, to the extent of two-thirds of such issue, with the permission of Her Majesty in Council.

(6) The Bank of England to publish a weekly account of the notes, bullion, securities, and deposits in both departments.

(10) No new bank of issue to be created.

(11) It shall not be lawful for any company or partnership, now consisting of only six or less than six persons, to issue bank notes at any time after the number of partners shall exceed six in the whole.

(12) Bankers ceasing to issue, or becoming bankrupt, may not resume the power of issue.

(13) Existing banks of issue not to exceed their average circulation for the twelve weeks preceding 27th April 1844.

(18) Every bank of issue to render to the Comptroller of Stamps and Taxes a weekly account of his daily circulation, and a monthly account of his average for the month.

Much controversy has been aroused as to the good or evil effects of the Bank Act of 1844. Certainly it failed in some of the expectations of its supporters, for the country has suffered from successive severe panics in 1847, 1857, 1866, and 1877, and the Act has had to be suspended in each of the three first-mentioned years, so as to allow of the issue of notes in excess of the limit without the deposit of bullion. The Act has neither secured us against seasons of intense monetary pressure and lack of public confidence, nor has it ensured the convertibility of the Bank of England note. Its supporters forgot that the liabilities of the bank to pay gold on demand are not confined to those arising from its note circulation. Every amount credited in the books of the Bank of England to any of its banking customers is a fresh liability incurred by the bank, and the reserve of coin is open to a drain from this quarter just as much as from the presentation of bank notes ; the whole of the metallic reserve of the Bank of England might easily be drawn out by the cheques of its customers, which include all the leading joint-stock banks, without the note circulation being contracted to the extent of a single note. When this reserve is gone, there remains the bullion which is held in the issue department as security for notes issued beyond £14,000,000 ; this stock of bullion must then either be used for banking purposes, that is to say, in payment of cheques and in advances to other banks, in which case the convertibility of the bank note would no longer be assured, or else the whole of the banking system of the country must collapse. The Bank of England is the pivot round which revolves the whole of our banking system, and it holds the ultimate reserve on which rests the credit of the country : therefore, if this last stock of bullion must be retained in order to render the convertibility of the note absolutely assured, the whole of the national credit may have to be sacrificed.

As a matter of history the Bank Charter Act, so far as it affects the

convertibility of the Bank of England note, is rapidly becoming obsolete and unnecessary. The danger of a possible collapse of credit lies now almost entirely in the direction of the purely banking business of the country and not in the note issue. The issue of notes by the Bank of England tends to become stereotyped and automatic, and the amount varies chiefly according to the season of the year and such causes as can easily be foreseen. On the other hand, the enormous system of credit which characterises our present economic condition has become more delicate and complex than ever, and it rests on a comparatively slender basis of bullion; this is a fact to be accepted, and one which admits of no discussion; a return to cash payments would be impossible to-day; it may be that this renders our position one of continual insecurity, and dangles before our eyes the ever-present possibility of disaster, but it is a position from which we cannot retire. What we can do is to ensure that the Bank of England reserve is an efficient one, and it is by drawing attention to this fact that the Bank Act of 1844 has deserved most at our hands. The Bank reserve is still insufficient, and a wish has been urged in many quarters that the leading joint-stock banks might be induced to share the burden of keeping the bullion reserve with the Bank of England. It is pointed out that the Bank of England is a corporation of business men actuated by the hopes and fears incidental to dividend-paying and carrying on its business in competition with the leading joint-stock banks, and that its privilege of being the Government banker is not enough to justify the imposition on to its shoulders of the whole burden of keeping the national reserve. This argument derives strength from the fact that the last ten years of the nineteenth century have evolved a much more powerful class of bank than formerly existed. A passion for amalgamation characterised these years, and under its influence most of the smaller joint-stock bankers and almost all of the private bankers have been absorbed by their more influential neighbours.

Since the year 1878 we have not suffered one of those monetary crises which had hitherto occurred so regularly at intervals of ten years. It is true that in 1890, when Baring Brothers were unable to meet their engagements, a panic might have occurred but for the promptitude with which the clearing bankers met and agreed to jointly guarantee the engagements of the defaulting firm. This freedom from panic is probably due to the increased experience and improved methods of the later generation of bankers, and perhaps also to the greater publicity with which banking and in fact nearly all financial business is now carried on. With the evolution of a more powerful type of bank has come an increased sense of responsibility and a dislike for running great risks. All bankers now realise the folly of granting large permanent overdrafts to single firms or individuals, and it is to be hoped that a repetition of the experiences of the City of Glasgow Bank would now be impossible. When that bank stopped payment in 1878 it was found that, with a capital of only £1,000,000, it had advanced no less than £6,000,000 to five firms, all of whom proved insolvent.

Scotch and Irish Banking.—Banking in Scotland has developed on somewhat different lines from those followed in England, and she has escaped many of the dangers and difficulties which have beset her southern neighbour. The Bank of Scotland was founded in the year following that of its prototype, with exclusive privileges of banking; but unlike those of the Bank of England, these privileges were not continued, and a rival, the Royal Bank of Scotland, was founded in 1727, followed in 1746 by the

British Linen Company, all of them being incorporated by Royal Charter. The Scotch banks opened branches in the provinces at a much earlier date than was the case in England, and the practice of banking quickly became established among the people. Scotch banks from as early as 1704 issued £1 notes, and have continued to do so till the present day, while in England none have been issued by the Bank of England since 1825. The result has been to accustom the people to the use of a paper currency to such an extent that a great economy has been effected in the use of gold, and the country has not experienced that rush for coin and distrust of all paper in times of panic which has caused such distress in England. This practice has been helped by the system of "cash-credits," which has played such a prominent part in the development of banking in Scotland. These cash-credits were loans issued on the security of two or more individuals, and repayable on demand, the borrower being credited with such sums, not exceeding the total amount of the cash-credit, as he required from time to time. These loans were of course made by means of the notes of the bank; and as these notes were payable at the head office of the bank only, it was but seldom that the branches were compelled to pay any large sums in gold.

It is easy to see that this system of banking, in which notes played such an important part, favoured the formation of powerful banks; and as there did not exist the legal restrictions which forbade the rise of such a class in England, the private bankers were unable to survive for long. To such an extent has this process been developed, that there are at the present time but ten banks in Scotland, all of them joint-stock institutions.

In Ireland the development of banking was upon lines similar to those of England. The Bank of Ireland was incorporated in 1782, with exclusive privileges of joint-stock banking. This monopoly was not relaxed until 1821, when an exception was made of those parts of Ireland which were more than fifty miles from Dublin. Consequently Ireland has suffered considerably from the insecurity attaching to small private banks; but the rise of the Provincial Bank of Ireland in 1826, followed by other joint-stock banks, resulted in their rapid decay, and there now remain no private banks in Ireland outside of Dublin.

The year 1845 saw the main principles of the Bank Charter Act of 1844 extended to Scotland and Ireland. In both of these countries the right to issue notes was finally restricted to those banks which had exercised the privilege during the year preceding 1st May 1845. The amount of each bank's issue was not to exceed the average amount during the above-mentioned year, together with an amount equal to the stock of bullion they may possess at the time, of which three-fourths must be gold.

The Practice of Banking.—Having given this brief sketch of the development of our banking system, we can now deal with practical banking as it is carried on at the present time.

A few words are necessary as to our currency. Our coinage is regulated by the Act of 1816, which first legally established our currency on a basis of gold monometallism. Until the beginning of the eighteenth century silver had been the standard metal, but during the eighteenth century it was superseded by gold, and this change was legally recognised in 1816. By this Act silver was made legal tender only to the amount of forty shillings, and the right to coin silver was reserved to the State. Any one taking gold to the Mint is legally entitled to receive sovereigns for it, coined at the rate of £3 : 17 : 10½ per oz., which is called the Mint price of gold. This right is very little used, however, and gold is in practice always taken to the Bank of England, who allow £3 : 17 : 9 an oz., the difference of

1½d. an oz. being their charge for the transaction. Worn gold coins are received at the Mint at their full value, unless the deficiency amounts to more than three grains; but Pre-Victorian gold coins are no longer legal tender, and when presented to a bank a charge of sixpence each coin is usually made. Silver is coined at the rate of 5s. 6d. the oz.; and as the present price of silver is about two shillings an oz., there is obviously a large profit on coining silver, and it is necessary to limit its quantity by reserving the right to the Government. This system reduces our silver coins to the condition of "tokens." Until the breakdown of the "Latin Union" in 1874, most of the nations of the Continent had a double or bimetallic standard of value. Under this system, any one could bring either gold or silver to the Mint and demand coins in exchange which were a legal tender at the ratio of 15½ to 1, but the rapid fall in the price of silver, which has gradually declined from 5s. an oz. to its present price, compelled them to abandon the system; and although a strong party has existed even in England in favour of a revival of the bimetallic standard of value, its efforts have been futile and now seem hopeless. A famine in gold, and consequent general fall in prices, was prophesied as the result of the demonetisation of silver, but this has happily been prevented by the large output of gold from the Rand, and gold now seems firmly established in Europe as the standard of value. Bronze coins are also "tokens," and are legal tender only to the value of one shilling. Bank of England notes were made legal tender in England by the Act of 1844, except when tendered by the bank or its branches.

Banking we may define as the business of dealing in money and the instruments of credit. Originally bankers were simply dealers in money; but with the growth of credit to its present enormous and complex dimensions, the part played by the precious metals has acquired but minor importance. Bankers now chiefly deal in credit and the various instruments of credit, and these promises to pay gold on demand or at fixed periods are usually liquidated without the use of gold or silver. Indeed, it would be impossible at any given time to perform all the existing promises, and our system is based on mutual confidence and forbearance. When through various causes a temporary lapse of confidence occurs, and an unusual demand for gold ensues, we get what is called a commercial crisis or panic, often causing great distress, and endangering our whole business system.

The smallness of the part played by coin in our banking transactions can be seen by the following table, prepared by Sir John Lubbock, and published in the *Statistical Journal*, of the business transactions of Robarts, Lubbock, and Company, in the year 1864. Of the twenty-three millions which passed through their hands, the particulars are as follows:—

	Per cent.
Cheques and bills passed through the Clearing House	70·8
Cheques and bills collected otherwise	23·3
Bank of England notes	5·0
Coin	·6
Country bank notes	·3
	100·0

Again, Mr. R. H. Inglis Palgrave, writing in the same journal of the Manchester and Salford Bank, says that coin and notes formed 53 per cent of the total transactions in 1859, 42 per cent in 1864, and 32 per cent in 1872, and of this latter percentage in 1872 only 5 per cent was coin.

The most important function of a banker, then, is his dealings in the instruments of credit, cheques, bills of exchange, and notes. A cheque is a bill of exchange drawn on demand upon a banker, and a bill of exchange is further defined by the Bills of Exchange Act of 1882 as "an unconditional order in writing, addressed by one person to another, signed by the person giving it, requiring the persons to whom it is addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person, or to bearer."

Clearing House.—The business of collecting cheques forms the major part of a banker's duties, and is chiefly carried out through the London Clearing House. This latter institution was in its origin a voluntary association of certain London private bankers founded about the year 1775 for the purpose of exchanging cheques drawn upon each other. It was not till 1854 that joint-stock banks were admitted to the privileges of the Clearing House. This extension was, however, followed in 1858 by the establishment of the Country Clearing, by means of which country banks were enabled to collect the cheques drawn upon each other without the expense and trouble of presenting them direct through the post. Every country bank of any importance now has a London agent with a seat at the Clearing House, through which he collects the cheques he receives in the course of his business. The number of clearing bankers is now 18, and they are as follows:—

Barclay and Co., Ltd.
Capital and Counties Bank, Ltd.
Glyn, Mills, Currie, and Co.
Lloyds Bank, Ltd.
London and County Bank, Ltd.
London Joint Stock Bank, Ltd.
London City and Midland Bank, Ltd.
London and South-Western Bank, Ltd.
London and Westminster Bank, Ltd.
Martin's Bank, Ltd.
Metropolitan Bank of England and Wales, Ltd.
National Bank, Ltd.
National Provincial Bank of England, Ltd.
Parr's Bank, Ltd.
Prescott, Dimsdale, Cave, Tugwell, and Co., Ltd.
Robarts, Lubbock, and Co.
The Union of London and Smith's Bank, Ltd.
Williams Deacon's Bank, Ltd.

Besides these the Bank of England clears on one side only—that is to say, it collects the cheques which it receives from its customers through the Clearing House, but requires other banks to present cheques drawn upon it at the Bank of England.

Every clearing bank sends a certain number of clerks to the House in Post Office Court, Lombard Street, with bundles of cheques, technically known as "charges," drawn upon the other members of the House, or upon banks for which they are agents, and receives in return bundles of cheques drawn upon himself or his country correspondents. There are three clearings during the day, the Morning Clearing, the Country Clearing, and the Afternoon Clearing. The balances are settled by drafts upon the Bank of England, where every clearing banker keeps an account. The Bank of England transfers these balances from the account of one bank to that of the others, and thus the whole clearing is effected without the use of coin or notes. All "returns"—that is to say, cheques which are not paid owing either to some technical error in the cheque or through want of funds—must be received back at the Clearing House the same day in the case of London banks, and by the morning of the third day in the case of country banks. Country banks do not, however, send unpaids back to the Clearing House, but return them direct to the bank whose crossing they bear and advise the House of the fact. The total amounts of the cheques passed through

the London Clearing House reach enormous dimensions, as the following figures show:—

Year.	Total Amounts of Clearings.
1870	£3,914,220,000
1880	5,794,238,000
1890	7,801,048,000
1898	8,097,291,000
1899	9,150,269,000
1900	8,960,170,000

But these figures do not represent all the cheques and bills collected by bankers. A large proportion of the cheques drawn upon the suburban branches of the large English banks are presented direct by "walk clerks," while there are provincial clearing houses at Birmingham, Bristol, Leeds, Leicester, Liverpool, Manchester, and Newcastle-on-Tyne, where the local banks clear the cheques drawn upon each other. Scotland possesses clearing houses in Edinburgh and Glasgow, and in Ireland there is one in Dublin.

There is, however, no international clearing house between the three kingdoms. Although most of the Scotch banks have branches in London, they have been refused admittance to the London Clearing House, and cheques which are circulated in a country other than that in which the bank is situated are usually collected direct through the post. Thus, if an English country banker acquires a cheque on a Scotch bank, he sends it direct and usually receives in return a draft on London.

Some of the larger banks in each country have made mutual arrangements with each other to clear one another's cheques, but these are merely private arrangements, and some system of international clearing between the three countries is badly needed. Under the present arrangement it is usual in the international collection to make a charge varying from 1s. to 2s. 6d. per £100.

Cheques.—Having seen how a banker collects cheques which come into his hands, we must now consider what are the requisites of a valid cheque, and what are the rights and responsibilities of those parties through whose hands it passes. Cheques are usually drawn upon the printed forms supplied by the banks, but they may be drawn upon plain paper, though this is a practice which is strongly discouraged by bankers, as the difficulty of obtaining a printed cheque is a great obstacle to a would-be forger. All cheques drawn, payable, or negotiated in the United Kingdom must bear a stamp of the value of one penny, either impressed or adhesive, with the exception of certain cheques drawn upon Government account, or by registered friendly societies, or by one bank upon another for the purpose of settling a clearing between the two banks. A receipt on a stamped cheque formerly did not require an additional stamp, but this was altered by the Finance Act of 1895, and all such receipts must now be stamped.

By section 18, clause 2, of the Bills of Exchange Act, a cheque "is not invalid by reason that it is ante-dated, or post-dated, or that it bears date on a Sunday." But although a post-dated cheque is valid under the terms of this Act, the practice is apparently a contravention of the Stamp Act, though the question has never been legally settled. A banker may not debit his customer's account with a post-dated cheque, but must hold it until it becomes due; if he pays the money for the cheque before the due date, he of course runs the risk that the customer may have no funds left by the time he is legally entitled to debit the account. All cheques are drawn payable "to order" or "to bearer"; if neither is mentioned on the

cheque it is assumed that it is payable to order. All cheques except those payable to "bearer" require the endorsement of the payee, and the incorrect endorsement of a cheque is a matter which causes a great deal of trouble and loss of time to bankers. The name of the endorser must be spelled in the same way as that of the payee, and should the latter be incorrect the endorser should write it as spelled, adding the correct name beneath for identification.

All titles or marks of rank should be omitted as prefixes of the endorsement, but may be added as descriptions. Thus "Mr. Smith" is incorrect as an endorsement of a cheque payable to "Mr. Smith," but "Col. Jones" may be endorsed "W. Jones, Col." It is often difficult to state whether any particular form of endorsement is correct or not, because there may have been no legal decision on the point, but in case such an endorsement came before a court of law the custom of bankers would probably have the greatest effect in settling the question, so that it is fairly safe to accept the ruling usually given by a banker in such cases. It is not considered necessary to sign the full Christian names in an endorsement; so long as the initials agree with those in the body of the cheque it is sufficient. If a cheque is payable to "Mrs. John Jones," it should be endorsed by the lady's own name, with the addition "wife of John Jones" or "widow of John Jones," as the case may be. In the case of a trading firm or company the matter is more complex: if the style of the firm consists of the names of the partners, as for instance "Brown and Evans" or "John Smith and Sons," any of the partners may write the name of the firm, and by so doing he binds his copartners: but in some cases an agent may have to endorse; if so, he may sign *per procuration*, thus—

per pro Brown and Evans,
HENRY HARRIS.

A per procuration endorsement is valid in the case of an individual, a private firm, or a limited company. Of course an agent must be authorised by his principal to sign "per pro," but a banker is not bound to inquire as to the possession of this authority in an endorsement on a cheque; and although the principal is not bound by the unauthorised signature, the banker is exempt from liability in paying the cheque. Until recently bankers refused to pay on the endorsement of a limited liability company by procuration unless the official capacity of the agent was added, but this form of endorsement is now generally accepted.

An agent may also endorse by signing "for" or "on behalf of" his principals with the addition of his official designation, thus—

For the Middlesex Gas Company,
JAMES ROBINSON,
Secretary.

A banker accepts the signature in an endorsement of such officials as customarily have the power to sign for a company; thus the secretary, manager, director, or cashier may sign officially, but the description "clerk" or "foreman" would usually be refused. An agent cannot sign "for" or "on behalf of" without adding his official capacity, and in the case of an individual this form of endorsement must not be used. "For John Jones, Henry Smith" is incorrect; in such cases a per procuration form of endorsement must be used unless the agent holds a power of attorney, when he may sign

John Jones,
By his attorney, HENRY SMITH.

One of the most usual instances of incorrect endorsement is when the cheque is made payable to "Messrs. Smith," or "Messrs. Robinson." This literally means a firm all of whose members are named Smith or Robinson; it is, in fact, simply the plural of Mr. Smith. "Smith and Co." is therefore not the correct method of endorsing such cheques. The proper form is "J. and S. Smith," or "Smith and Son," or "Smith Bros," or even simply "Smiths," though many banks refuse to recognise this last form of signature. It is a legal maxim that an agent has no power to delegate his authority, therefore an endorsement in the form—

For the Middlesex Gas Co., Limited,
per pro J. Jones, Manager,
HENRY SMITH,

is incorrect; in the same way

For the Middlesex Gas Co., Limited,
J. JONES, *pro* Manager,

is wrong, though many banks endorse cheques payable to them in this manner. If a cheque is payable to "the executors of Henry James," it is usual for one executor to sign for the rest in the following form:—

For self and co-executors of Henry James,
JOHN SMITH.

On the other hand, trustees must all sign in an endorsement.

Should the payee of a cheque be unable to write, he should make his mark in the presence of a witness. The following is the usual form:—

Henry Jones
X
his mark.
Witness, J. SMITH,
10 West St., London, N.

The witness must in all such cases add his address.

An endorsement may be either "in blank" or "special." An endorsement in blank specifies no payee; a special endorsement specifies the person to whom or to whose order the bill is to be payable, thus—

Pay to the order of John Jones,
HENRY SMITH.

Although a cheque be endorsed in blank, any subsequent holder may specially endorse it to a further endorsee, and the cheque will then require this last endorsee's signature before payment.

All endorsers of a cheque by so doing guarantee the genuineness of it, and if the cheque is unpaid the holder can compel a previous endorser to refund the money, provided he has been served with due notice of dishonour, as we shall see later on.

It is usual to write the amount of a cheque in both words and figures, though the latter are not legally necessary. A banker, however, always requires the amount to be written in words. Should the two statements of the amount differ from one another, a banker may treat the one in words as the correct one, but in practice he will return the cheque unpaid with the answer "body and figures differ" or "amounts differ."

If the date be correct, the amounts agree, and the endorsement be correct, the banker will in most cases be able to pay the cheque; should

there be, however, insufficient money to the credit of the drawer, and the banker be unwilling to allow his customer to overdraw his account, the cheque will usually be returned with the answer "Refer to drawer" or "R/D"; other banks prefer the forms "n/s" or "not sufficient," or "n. p. f.," "not provided for." In England a banker must write the answer on a cheque drawn upon him which he returns unpaid; in Scotland and Ireland, however, such is not always customary, and if a cheque is returned without an answer, it is presumed that the drawer has not sufficient funds. If a cheque is torn quite in two a banker will refuse to pay it, returning it with the answer "mutilated cheque"; but if the tear does not extend right across the document, so that it is still in one piece, it will usually be paid. In the former case the holder must obtain a fresh cheque from the drawer, unless he can give his banker satisfactory evidence that the mutilation was accidental, in which case the collecting banker may indemnify the paying banker against possible loss. If the drawer of a cheque die, a banker must not pay any of his cheques after he has received notice of death; the holder of the cheque will then inform the executors of the deceased of his claim against the estate.

The drawer of a cheque may order his banker not to pay any particular cheque upon presentation, or, as it is usually called, "stop payment" of a cheque. But we must be careful to note that the drawer does not by doing so rid himself of his responsibility for the amount of the cheque. He cannot stop payment of a cheque as against a "*bona fide* holder for value." A *bona fide* holder for value or "holder in due course" is defined by the Bills of Exchange Act, 1882, 29 (1), as "A holder who has taken a bill, complete and regular on the face of it, under the following conditions, namely—

"(*a*) That he became the holder of it before it was overdue, and without notice that it had been previously dishonoured, if such was the fact.

"(*b*) That he took the bill in good faith and for value, and that at the time the bill was negotiated to him he had no notice of any defect in the title of the person who negotiated it."

The holder in due course cannot compel the banker to pay the cheque; he has no recourse against the latter, who is responsible only to his customer, but he can sue the drawer of the cheque and compel him to pay the amount. "He holds the bill free from any defect of title of prior parties, as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the bill" (Bills of Exchange Act, 38, 2).

It is necessary to note, however, that by section 24 of this Act no one can acquire a valid title to a bill or cheque through a forged endorsement. If, then, a man holds a cheque on which a previous endorsement has been forged, he does not become a "holder in due course," and cannot enforce payment.

There is one description of cheque to which we have not yet referred, and which is very little understood by the general public: this is the "crossed cheque." The effect of crossing a cheque, that is to say, of placing two parallel lines across its face, with or without the words "and company" enclosed, is that the banker on whom it is drawn must not pay it in cash across his counter, but only to another bank. The crossing of a cheque may not be on the back, and it may be added by the drawer or by any holder. A cheque may be crossed generally or specially, that is to say, with the name of a banker added, in which case the banker on whom it is drawn must pay

it only to the bank with whose name it is crossed. Section 79 of the Bills of Exchange Act defines the duties and responsibilities of a banker in dealing with a crossed cheque. Subsection (1) says: "When a cheque is crossed specially to more than one banker, except when crossed to an agent for collection, being a banker, the bank on whom it is drawn shall refuse payment thereof.

"(2) When the banker on whom a cheque is drawn which is so crossed nevertheless pays the same, or pays a cheque crossed generally otherwise than to a banker, or if crossed specially otherwise than to the banker to whom it is crossed, or his agent for collection being a banker, he is liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid."

Many people cross a cheque generally before sending it through the post, with a vague idea that it ensures the money being paid to none but the true owner; but of course this is a mistaken notion. If the cheque is stolen, or gets into dishonest hands, the thief cannot present it for payment across the counter of the bank on which it is drawn, and to this extent he is hindered in realising the amount; but should the cheque be payable to bearer, or be duly endorsed, and it gets into the hands of a third person, who takes it for value and in good faith, this latter person becomes a holder in due course, and can sue the drawer for the amount. To ensure, as far as possible, a cheque getting into the hands of none but the true owner, and of rendering it worthless to any one else, it should have the words "not negotiable" added to the crossing. The quality of negotiability is one which distinguishes coin, bills of exchange, cheques, and certain other documents from other forms of property. The qualities of a negotiable instrument are three: (1) Every person who acquires a negotiable instrument in good faith and for value shall (unless he gets it through a forged endorsement) have a good title to it, notwithstanding the possible defects of any previous holder. This is in direct opposition to the common law dictum, that no one can transfer a better title than he himself possesses. (2) The holder of a negotiable instrument can sue on it in his own name. (3) In the absence of proof to the contrary, it is assumed that valuable consideration was given for it. The mere crossing of a cheque does not deprive it of its negotiability; it only restricts this quality in certain cases, but the addition of the words "not negotiable" brings it within the scope of the common law, and every one who gives value for such a cheque does so at his peril; he takes it subject to any defects in the title of a previous holder, and if the cheque has been affected by fraud he cannot enforce it against the drawer or any holder previous to the fraud. As the crossing of a cheque necessitates its collection by a banker, and since, under the common law, if a banker collects a cheque for any one who is not the true owner he can be sued for "wrongful conversion," it was thought necessary to add a clause giving some measure of protection to bankers. Section 82 of the Bills of Exchange Act (which reproduces section 12 of the Crossed Cheque Act, 1876) says: "When a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title, or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment." The protection afforded to bankers by this clause reaches only to crossed cheques, and the law remains unchanged in the case of open cheques; and it was decided in *Bissell* v. *Fox* in 1884 that a banker cannot obtain protection by crossing cheques after they have reached his hands. The question of the liability of a collecting banker

is one of the most complex and least satisfactory of the problems he has to face. A case which throws considerable light on the subject was decided in the House of Lords on 23rd July 1901—*Great Western Railway* v. *London and County Bank*. Huggins, a collector of the plaintiffs, obtained from them by fraud a crossed cheque marked "not negotiable," drawn to his order on the London Joint Stock Bank. Huggins was well known to the Wantage branch of the defendant bank, where he had cashed cheques for many years, though he had no account. In this case part of the money was paid in to another account at the branch, and the rest handed to him in cash, with which he decamped. The drawers of the cheque sued the bank for the money, contending that the latter had negotiated a cheque marked "not negotiable," and that they had therefore acquired no title through Huggins. The bank pleaded section 82 of the Bills of Exchange Act, that they had collected the cheque for a customer. They argued that, although a stranger who came to a bank upon an isolated occasion to obtain money for a cheque may not be a "customer," yet it had been held in *Matthews* v. *Brown* that the term customer involved "use and habit," and that Huggins could fairly be claimed as such. Judgment was given for the plaintiffs, on the grounds that Huggins was not a customer, and that as the bank parted with the money before the cheque was presented, they had not collected it for Huggins but for themselves.

This last ruling is one of the greatest importance to bankers, and it seems to deprive them of the greater part of the protection given them by section 82. It is the universal practice of bankers to credit their customers at once with cheques drawn upon banks in the same town, and in most cases with cheques drawn upon London banks. In these cases it seems, in the light of the above ruling, and also of a similar one in *Bissell* v. *Fox* in 1884, that the bank collects the cheques for themselves and not for their customers, and that the transaction falls outside the scope of the above section of the Bills of Exchange Act.

A custom has grown up recently for the drawer or holder of a cheque crossed generally or specially to add the words "For account of payee only," or "Account of John Jones." This practice has received no statutory sanction, and its operation is doubtful. As far as the paying banker is concerned, it would seem that he is free from liability, for he has no means of knowing whether the cheque has been credited as directed or no. As regards the collecting banker, however, such words seem to be a direction to him to deal with the cheque in a certain way, and if he disregarded the direction, it is very probable that he would be held liable in damages. The only case dealing with the point is *National Bank* v. *Silke*, 1890, and in this case the defendants contended that the addition of such words restricted the transferability of the cheque.

A customer of the National Bank, named Moriarty, paid in to his account a cheque drawn by the defendant Silke, and crossed "Account of J. F. Moriarty, Esq., National Bank, Dublin." The bank allowed Moriarty to draw against this cheque before it was cleared, and when it was returned unpaid with the answer, "Order not to pay," the bank sued the drawer as holders for value. Silke concluded, however, that the crossing in the manner recorded above had the effect of restricting the transferability of the cheque under section 8, subsection 4, of the Bills of Exchange Act, which says: "A bill is payable to order which is expressed to be so payable, or which is expressed to be payable to a certain person, and does not contain words prohibiting transfer or indicating an intention that it should not be transferable." The defendant therefore claimed that the

National Bank were not the holders for value, and could acquire no title to a cheque which was in effect not transferable.

The Court, however, decided against this contention, and gave judgment for the bank, which was upheld by the Court of Appeal.

Bills of Exchange.—To turn now to the subject of bills of exchange other than cheques. A bill of exchange requires acceptance in writing by the drawee or person on whom it is drawn before the latter incurs any liability. The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. It must be written on the bill and be signed by the drawee. An acceptance may be either general, which is the usual form, or it may be conditional or partial; but in presenting a bill for acceptance, a partial or conditional acceptance would usually be refused in the absence of instructions to the contrary. The usual form of acceptance is to write across the face of the bill, "Accepted payable at . . . (naming an address, usually that of a banker), John Jones." If no address is mentioned in the acceptance, the bill is payable at the address of the drawee mentioned on the bill.

The usual form for drawing a bill of exchange is as follows:—

LONDON,.....

Three months after date pay to the order of John Smith the sum of one hundred pounds for value received. HENRY JAMES.

To Mr. Edward Turner,
180 West Street, Birmingham.

A bill may be drawn in a "set" of two or three parts, "each part of the set being numbered, and containing a reference to the other parts, the whole of the parts constituting one bill" (Bills of Exchange Act, sec. 71). In this case the bill should be drawn:—"Three months after date pay this $\left.\begin{matrix}\text{first}\\\text{second}\end{matrix}\right\}$ of exchange $\left(\begin{matrix}\text{second}\\\text{first}\end{matrix}\right\}$ of the same tenor and date being unpaid), to the order of," etc. The place from which the bill is dated should always be mentioned, otherwise it may not be possible to tell whether it is an inland or a foreign bill. A bill may be drawn on demand, or at sight, or on presentation, or so many days after sight, or on such and such a date, or so many days or months after date. When a bill is not payable on demand, or on sight or presentation, three days, called days of grace, must be added to the time of payment as fixed by the bill, and the bill is payable on the last day of grace. Should this due day fall on a Sunday, Christmas Day, Good Friday, or day appointed by royal proclamation as a public fast or thanksgiving day, it is payable on the preceding business day. Should it, however, fall due on a Bank Holiday, or when the last day of grace is a Sunday and the second day of grace a Bank Holiday, it is payable on the succeeding business day. Bills drawn by the Bank of England upon themselves do not take three days' grace. A bill drawn at one month after date, and dated 31st January, is due 3rd March, and a bill dated 30th June, drawn at one month after date, is due 2nd August, the term month meaning always calendar month. A bill drawn "after sight" is reckoned from the day on which it is presented for acceptance, and the acceptor should always write the date of his acceptance on the bill. If a bill is drawn in the form—"On 1st October *fixed*," it does not take the three days' grace.

The stamp on a bill of exchange drawn on demand, or at sight or on presentation, or at three days or less after sight, is one penny, which may be denoted by an adhesive or an impressed stamp. The stamp to be used

is an inland revenue stamp, whether the bill of exchange is inland or foreign. The stamps on bills of exchange drawn after date, or at more than three days' sight, if they are negotiated, drawn, or payable in the United Kingdom, are as follows:—

When the amount of the bill does not exceed £5	1d.
Exceeds £5 and does not exceed £10	2d.
„ £10 „ £25	3d.
„ £25 „ £50	6d.
„ £50 „ £75	9d.
„ £75 „ £100	1s.
For every £100 and every fractional part of £100	1s.

If a bill drawn payable abroad is afterwards paid or negotiated in the United Kingdom, the scale of stamping is, under the terms of the Finance Act of 1899, less than the above; viz. exceeding £50 but not exceeding £100, 6d.; for every succeeding £100 or part of £100, 6d. For bills under £50 the rate is the same as for inland bills.

The *ad valorem* stamps on bills drawn out of the United Kingdom are to be denoted by adhesive foreign bill stamps; in other cases the stamp must be an impressed inland bill stamp. It is most necessary when drawing a bill to take care that it is drawn upon paper stamped to the correct amount; if the amount of the impressed stamp is insufficient, not only will a banker refuse to pay it, but it would be impossible to maintain any suit on the bill in a court of law.

An inland bill must be drawn on paper already stamped. The only occasion when it can be stamped afterwards is when the bill has been drawn upon paper bearing an impressed stamp of sufficient amount but of improper denomination; in this case it can be restamped on payment of a penalty varying from 40s. to £10. Where a bill is drawn in a set it is only necessary to stamp one of the set.

All adhesive stamps on bills of exchange or cheques must be cancelled by the person affixing his name before the document leaves his hands, "by writing on or across the stamp his name or initials, or the name or initials of his firm, together with the true date of his so writing, or otherwise effectively cancelling the stamp." The fine for neglect of this precaution is £10.

This is a clause which is constantly neglected, and especially in the case of the penny stamp on a cheque drawn on blank paper; but not only should drawers remember that they are liable for a penalty under the Stamp Act, but the holders of such cheques are unable to sue as holders under the Bills of Exchange Act if the neglect to cancel the stamp can be proved. This was settled in the case of *Hobbs* v. *Cathie*. Cathie drew a cheque in favour of one Bull on plain paper and omitted to stamp it. Bull negotiated the cheque to the plaintiff, and before doing so stamped the cheque but omitted to cancel the stamp. Cathie stopped payment of the cheque, and Hobbs sued him as a holder for value. The judgment was in favour of the defendant on the grounds that the Act only permitted the use of an adhesive stamp on cheques on the condition that it was cancelled by the drawer or by the banker on whom the cheque was drawn; that in the present case the stamp was cancelled by neither the drawer nor the banker, and that it was therefore never duly stamped.

The law of endorsements on bills of exchange is, with one important exception, the same as that in the case of bankers' cheques which we have just discussed. An endorsement must be written on the bill, and although

it is usual to endorse on the back of the bill, an endorsement on the face is quite legal. When there is not room on the bill for all the endorsements, it is usual to attach a slip of paper called an "allonge"; and in order to avoid the possibility of fraud, it is better to write the last endorsement of the bill proper, partly on the "allonge" and partly on the bill.

The important difference between the endorsement of a bill of exchange and that of a cheque is that in the case of the latter, if "the banker on whom it is drawn pays the bill (*i.e.* cheque) in good faith and in the ordinary course of business, it is not incumbent on the banker to show that the endorsement of the payee, or any subsequent endorsement, was made by or under the authority of the person whose endorsement it purports to be, and the banker is deemed to have paid the bill in due course, although such endorsement has been forged or made without authority" (Bills of Exchange Act, 1882, sec. 60).

This protection to the banker against paying on a forged endorsement does not extend to bills of exchange, and as the banker in such cases is not acquainted with the signatures on the back of a bill presented for payment to him, he incurs considerable risk against which he can take no precaution.

The only protection afforded him is by sec. 7 (3) of the Act, which says: "Where the payee is a fictitious or non-existing person, the bill may be treated as payable to bearer."

This is the subsection on which was decided the well-known case of *Vagliano Brothers* v. *The Bank of England.* The plaintiffs were in the habit of accepting a large number of bills drawn on them from abroad, of which they advised the Bank of England, where the bills were payable, before the time when they fell due. Glyka, a confidential clerk of the plaintiffs, forged forty-three bills purporting to be drawn by Vucina, an Odessa merchant, to the order of C. Petridi and Company of Constantinople. Both of these were existing firms known to Vagliano Brothers, and Glyka having forged both the drawer's and endorser's signatures, induced the drawees to accept them. They were duly advised to the Bank of England by Vagliano Brothers with a request that they should be paid, and accordingly several of them were paid in cash across the counter to Glyka. When the fraud was discovered, Vagliano Brothers sued the Bank of England for the amount, £71,500, on the ground that the bank had paid the bills on a forged endorsement. The bank, on the other hand, contended that the action of the acceptors in advising payment of the bills justified them in so doing, and that the payees must under the circumstances be considered as "fictitious or non-existing persons" within the meaning of sec. 7 of the Bills of Exchange Act as quoted above.

The case was decided in the first instance in favour of Vagliano Brothers, and this was upheld by the Court of Appeal, but the House of Lords reversed the decision by a majority of six to two. As regards the forgery of the drawer's name, the acceptor is by sec. 54 of the Act precluded from denying the existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill. Lord Macnaghton laid down that the proper meaning of a "fictitious" payee is "feigned or counterfeit," and that C. Petridi and Company were none the less fictitious persons because there were in existence real persons for whom these names were intended to pass muster.

If a bill is payable after sight, presentment for acceptance is necessary in order to fix the maturity of the bill. Any other bill which is drawn

payable elsewhere than at the residence or place of business of the drawer must be presented for acceptance before it can be presented for payment.

The holder of a bill payable after sight must either negotiate it or present it within a reasonable time; if not, the drawer and all previous endorsers are discharged from all liability on the bill. The question of what is a reasonable time is dependent upon the nature of the bill, the usage of the trade with respect to similar bills, and the facts of the case. Presentment for acceptance must be made at a reasonable hour on a business day to the drawee or some person authorised to accept or refuse acceptance on his behalf. Thus presentment to a clerk in the office of a business man is a proper presentment, but presentment to a servant at a private residence is not. Presentment through the post is sanctioned by custom, and is reckoned a legal presentment. If acceptance is refused the bill may be treated as dishonoured, and an immediate right of recourse against the drawer and all previous endorsers ensues.

All bills not payable on demand must be presented for payment on the day they fall due; bills payable on demand, or at sight or on presentation, must be presented for payment within a reasonable time.

The consequence of an omission to do this is that the drawer and all endorsers are released from liability on the bill, but not the acceptor. As a rule, bills are accepted payable at a banker's; they must accordingly be presented for payment as indicated in the acceptance. If no place of payment is mentioned, they must be presented for payment at the address of the acceptor as given in the bill. If an acceptor has changed his address since the time he accepted the bill, he must either make arrangments that it shall be paid at the original address, or if he can trace the bill, he should notify the holder of his change of address, otherwise there will be a risk of the bill being dishonoured. If a bill is drawn in a set, the drawee must be careful to accept one part only, or he will be separately liable on each part accepted.

When a bill is dishonoured by non-acceptance or non-payment, notice of dishonour must be given to the drawer and each endorser, or else they are released from liability on the bill. If the party to whom notice is to be sent is resident within the same town, it must reach him on the day following the dishonour of the bill; if otherwise, notice must be sent on the day following the dishonour. Thus it must not be forgotten that if a bill is "domiciled" or made payable at a banker's, he has the right to keep it a day after maturity before sending it back unpaid, if the holder does not live in the same town.

A banker usually gives notice of dishonour by the simple return of the bill with the answer written upon it. The usual answers in this case are "R/A" or "refer to acceptor," "n/a" or "no advice," or "n/o" or "no orders." If the man who receives back a bill from his bankers wishes to keep his recourse against a previous endorser or the drawer, he is allowed the same time to serve notice of dishonour, namely, it must reach the party by the next day if he lives in the same town, if not he must forward the notice by the day following the one he received it. This applies to cheques received back unpaid, when notice must be sent to the drawer as well as to any endorser against whom recourse is required. All foreign bills which are dishonoured, whether by non-acceptance or non-payment, require to be protested; if a bill has been protested for non-acceptance it is not legally necessary to protest it afterwards for non-payment, but this is often done in order to satisfy the requirements of the country in which the bill is drawn. In the case of an inland bill a protest is not necessary, but it is

often made at the request of the holder. All protests must be made on the day on which the bill is dishonoured, but it is sufficient if the bill is merely noted for protest on the day of dishonour, the noting may be extended to a formal protest at any time considered necessary; by this means part of the expense of a formal protest is saved. It is the practice of most bankers to note all bills, whether foreign or inland, unless they have received instructions to the contrary from the holder of the bill. The protest must be made at the place where the bill is dishonoured, except when a bill is presented and returned through the post, when it may be protested at the place to which it is returned, but this latter practice is local and unusual. It may happen that there is no notary in a town where a bill is dishonoured; in this case a householder's protest should be drawn up in the presence of two witnesses and stamped as follows: where the duty on the bill does not exceed 1s., the same duty as the bill or note; in other cases 1s. Postage stamps may be used. For the convenience of any who may have to draw up a householder's protest, we give below the form suggested in the 1st Schedule to the Bills of Exchange Act, 1882.

Form of Protest which may be used when the services of a Notary are not obtainable.

Know all men that I, A. B. (householder), of in the county of , in the United Kingdom, at the request of C. D., there being no notary public available, did on the day of 19 , at , demand payment (or acceptance) of the bill of exchange hereunder written, from E. F., to which demand he made answer (state answer, if any), wherefore I now, in the presence of G. H. and J. K., do protest the said bill of exchange.

(Signed) A. B.
G. H. } *Witnesses.*
J. K. }

N.B.—The bill itself should be annexed, or a copy of the bill, and all that is written thereon should be underwritten.

When a bill has been noted or protested, and is afterwards presented again for payment, the notarial expenses should be demanded as well as the original amount of the bill, and a banker is authorised to debit his customer's account with such expenses without obtaining the direct permission of the acceptor.

An accommodation bill is a bill which has been accepted by a drawer without receiving value for the same, and for the purpose of lending his name to some other person. This latter person, as a rule, provides for the bill before maturity. The transaction is a method of borrowing money, the holder discounting the bill at his banker's and withdrawing it before presentment.

When an alteration in a material part of a bill of exchange is made, that is to say, in the date, amount payable, the time of payment, and the place of payment, the alteration should be initialed by both drawer and acceptor. The acceptor of a bill is not, however, bound to see that it is drawn in such a manner as to prevent the fraudulent alteration of the bill. Of course it is to the interests of all the honest parties to a bill that such precautions should be taken, and it is advisable to see that a bill is not drawn on paper bearing a larger stamp than necessary, and that no blank spaces are left in the document. But no legal obligation to do this exists, as has been held in the case of *Scholfield* v. *The Earl of Londesborough*. A man named Sanders drew a bill for £500 upon the defendant, the Earl of Londesborough. It was drawn upon a £2 stamp, which was sufficient to cover an amount up to £4000. The amount of the bill was written in

figures, with sufficient space between the £ and the 5 to admit of the insertion of another figure. The body of the bill ran: "Pay to me or my order the sum of," then a blank space; on the next line were the words "five hundred pounds," etc. The man Sanders obtained the defendant's acceptance to the bill in the usual course, and then fraudulently altered the amount to £3500. The bill in this form was negotiated, and came into the hands of the plaintiff in good faith and for valuable consideration. The bill was not paid, and Scholfield sued the acceptor for the full amount, on the ground that he was "estopped" from pleading the forgery by reason of negligence in accepting the bill in the form it was drawn. The Court of Appeal decided in favour of the defendant, and the Master of the Rolls stated the opinion that the acceptor had no duty towards the drawer or endorser of a bill of exchange except that of paying it when presented.

Promissory Notes.—A promissory note is "an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay, on demand or at a fixed or determinable future time, a sum certain in money to or to the order of a specified person or to bearer" (Bills of Exchange Act). The following is the usual form in which a promissory note is drawn up:—

LONDON,.....

One month after date $\frac{\text{I}}{\text{we}}$ promise (or we jointly and severally promise) to pay to the order of the sum of for value received.

(Signed) HENRY JONES.

The "maker" of a promissory note stands in the same position towards the endorsers or holders as the acceptor of a bill of exchange, and if we except the provisions relating to acceptance, the law is the same for the two classes of documents; a promissory note does not require accepting by the maker. Promissory notes are not drawn in a set, nor is protest legally necessary in the case of the dishonour of a foreign note. The stamp duties are the same for the two classes of documents, except in the case of bankers' promissory notes to bearer on demand, which are stamped at a higher rate and can be reissued. The issue of these is, as we have seen, controlled by the Bank Charter Acts of 1844-45.

Banker and Customer.—We come now to consider the relations between a banker and his customer in the working of a banking account. A banker impliedly contracts to pay his customer's cheques while there is sufficient money remaining to the credit of the customer, in return for the advantages he derives from the use of his customer's capital, or else for the receipt of a certain sum in commission. In the event of a breach of contract the banker is liable to be mulcted in damages. This is the broad relationship between the two. The first formality to be undergone before opening an account at a bank is the production of a satisfactory introduction. If the account is transferred from another bank a banker's introduction is usually given, but in default of this the banker will accept the introduction of any respectable individual who is known to him. Of course it is advantageous to the customer to obtain as satisfactory an introducer as possible, as this may have some weight in determining the banker's answer to a request for temporary accommodation. The banker will then require the customer to write his name and signature and the particulars of his address and occupation in the signature book.

It is desirable to come to some understanding with the bank manager as to the terms on which the account is to be kept. The amount of the balance which a bank expects a customer to keep in order to avoid a charge

for the management of an account, varies according to the character of the account and the standing of the bank. Thus a business customer with a large turnover is required to keep a very much larger balance than a private individual who only uses his account for his household and personal expenses. Again, a bank in the City of London would probably often make a charge for keeping an account which a small country branch would keep for nothing. Under these circumstances it is impossible to put into figures the probable requirements of a bank manager.

It is well to be as open as possible to a banker when making arrangements about opening an account. A man's financial reputation may lie in his banker's hands, and nothing induces caution in a banker's dealings with a customer so much as a show of reserve or secrecy on the latter's part. In many instances a banker has to refuse accommodation to a customer through lack of knowledge of his true position, when he would willingly have granted it, had a little more confidence been reposed in him.

Having satisfied the bank in the matter of introduction, and deposited the money wherewith the account is to be opened, a cheque-book will be issued to him, if the introduction is sufficiently good to warrant it being done at once, but in many cases the banker will require the cheques deposited to be cleared before doing so.

It is usual for bankers to credit a customer immediately with cheques on banks in the same town, and in the case of most English banks, with cheques drawn on London banks. But in the case of cheques which have to be collected through the country clearing, or those drawn on a bank in one of the other countries of the United Kingdom, many bankers require their customers to wait until the cheques have been cleared before crediting their accounts with the proceeds. This usually occupies three, four, or five days.

In paying in cheques it is a frequent practice of customers to ask for part of the amount to be given them in money, and the rest to be credited to their account. Some banks refuse to do this, and it is a practice not to be encouraged: it is bad book-keeping, because the whole of the transaction does not show in the pass-book, and may lead to confusion when the account has to be checked. If the customer requires part of the amount in cash, the proper method is to credit his account with the total and get him to draw a cheque for what money he may require. In drawing cheques the drawer is bound to take reasonable precautions against a possible fraudulent alteration, or he may be held to have contributed to the subsequent fraud by his negligence, and be estopped from setting up the bank's negligence in paying the cheque. In discussing the case of *Scholfield* v. *Londesborough*, we saw that the acceptor of a bill of exchange has no such onus thrown upon him; but in the same case Lord Shand expressed the opinion: "The case of *Young* v. *Grote*, between a banker and his customer, was one in which there was the relation of parties contracting with each other, . . . and this relation inferred, if not expressly, at least by implication, the duty and obligation on the customer's part, in issuing cheques on his banker to third parties, to take care that these were not in such a form as to give the means of enlarging their amount without this being readily detected."

The case of *Marcussen* v. *The Birkbeck Bank* in 1889 turned upon the same point. The plaintiff had drawn a cheque for £8 : 5s. in such a way that a fraudulent holder had altered it to £80 : 5s., by adding a cipher after the 8 in the figures and a "y" in the words. Judgment was given for the defendant bank on the ground of negligence; and Mr. Justice Matthew, in summing up, said that the law on the subject was that "if a cheque was so

carelessly drawn as to expose a banker, using reasonable care, to the risk of paying what was not intended, then the banker was not liable."

When paying in cheques or money to the credit of his own account, a customer does not usually ask for a receipt from his banker, but if he requires one the banker must give it. Such receipt is exempt from stamp duty so long as a third party's name does not occur in it. If it is desirable to have some proof that the cheques have been received by the banker, as, for instance, when they are entrusted to a messenger, it is usual to obtain from the banker a book of credit slips issued in duplicate. The banker then retains one part, and the cashier signs or initials the corresponding part and returns it to the customer.

Sometimes a customer pays in a cheque to his credit for a special purpose, as, for instance, in order to provide for a cheque which he has drawn. This is called "earmarking" a credit, and if a banker receives a credit for such a special purpose, he is bound so to apply it, and cannot use it as a means of reducing his customer's debt to him if the account should be overdrawn at the time.

A banker is bound to furnish his customer with a copy of his account if desired, and this is done by issuing a "pass-book," which is a copy of the banker's ledger. An entry in a pass-book is not conclusive proof of the truth of the entry, but if a customer can show that he has suffered loss or damage through being misled by a false entry in a pass-book, he can obtain damages against the banker. In the same way acquiescence in certain entries in a pass-book on the part of a customer has been held to prevent him from afterwards denying the truth of such entries. Thus in *Chatterton* v. *London and County Banking Company, Limited*, 1890, the plaintiff sued the bank for the amount of twenty-five cheques which he alleged to be forgeries. On the bank's part it was stated that the signatures in question had been brought under the notice of the plaintiff, and he had stated them to be correct; moreover, he had each week ticked off the items in the pass-book with his own books, yet though the cheques alleged to be forged were entered in the pass-book, he failed to discover the fraud until the auditor inspected his books. Judgment was given for the defendant bank, and the jury found that the plaintiff's conduct had contributed to the loss.

In some banks it is the custom to enter amounts in the pass-book immediately they are paid in, but other banks refuse to do this, and issue the pass-book made up only to the evening of the preceding business day.

We have seen that by section 82 of the Bills of Exchange Act a banker who receives payment for a customer of a *crossed* cheque is protected from the consequences if the customer had no title to the cheque, provided he does so without negligence and in good faith. The position of a banker who receives payment of an uncrossed cheque under similar circumstances is not so happy, and he can claim no protection under this section; moreover, it has been held in *Bissell* v. *Fox* that a banker cannot bring himself within the protection of the section by crossing the cheques after they have come into his possession. If the banker collects cheques of this description for a man who has no title, whether a customer or not, the banker is liable under certain circumstances for wrongful conversion. He will stand or fall according to the validity of the title which the customer has, and which he gives to the banker. Thus, as a bearer cheque is negotiated by delivery only, the banker would acquire a good title from his customer, and would not be liable to the true owner. If, however, the cheque was an open one, payable to order, and the customer for whom the banker collected it had forged the endorsement, or if an agent, had endorsed it without the authority

of his principal, he could give the collecting bank no title to it, and the true owner would have a remedy against the banker. The case of *Bissell* v. *Fox*, 1884-85, is of great interest in this respect.

Shakeshift, a commercial traveller in the employ of the plaintiffs, was in the habit of remitting to his principals weekly the cheques he received in the course of business. Instead of doing this he opened an account with the plaintiff bank, and paid in to his own credit seven cheques payable to his principals, and endorsed by him "per pro." Three of these cheques were crossed and four open. The plaintiffs brought an action to recover the amounts of all these cheques, and contended that in the case of the crossed cheques the defendant bank had been guilty of negligence. Judgment was given for the plaintiffs in the case of all but one cheque, which was drawn on the defendants themselves, in which case the defendant bank were entitled to be considered as the "paying" bank and not the collectors of the cheque, and to be protected by section 60 of the Act, which relieves a bank from responsibility when paying on a forged endorsement. It was laid down in this case that the provisions of section 82 of the Act only apply when a banker receives a cheque already crossed, and not when a banker crosses a cheque to himself after receiving it for collection. This opinion seems at variance with section 77 (6), which expressly states: "When an uncrossed cheque, or a cheque crossed generally, is sent to a banker for collection, he may cross it specially to himself." This section was inserted in the Act at the suggestion of the Institute of Bankers for the express purpose of protecting bankers who collected uncrossed cheques, and of bringing them within the provisions of section 82; but if we accept the opinion laid down in this case as final, it has failed in its purpose.

It was also laid down that, in the case of the crossed cheques, the bankers had not acted without negligence, in that, knowing Shakeshift was an agent, they should have inquired as to his authority to endorse the cheques "per procuration" before passing them to the agent's own account. This is a decision of great importance to bankers, and devolves upon them the necessity for exercising great caution in dealing with the account of an agent; especially is this so when the agent and principal both keep their accounts at the same bank, and the bank are therefore unable to plead ignorance of the relationship between them. Bankers, when dealing with agents empowered by their customers to sign on their behalf, should see that the powers of the agent are sufficiently well defined in the written authority given by the principal. The power to draw cheques on behalf of a principal does not imply the power to overdraw the account, and such a power should be expressly mentioned in the authority delivered to the banker; otherwise the bank will probably be unable to claim against the principal for the amount of the overdraft. An agent cannot further delegate the power entrusted to him, and such power to act is terminated by the death, bankruptcy, or insanity of the principal.

In opening accounts in joint names, bankers require a written authority, signed by all, if cheques are to be drawn by one or part of their number. In the case of the decease of one of the number, the banker can pay the balance of the account to the survivors on proof of death, such proof usually being the exhibition of the burial certificate. If the banker possesses a written authority to honour the signature of each of the joint members, such a proof of death is unnecessary, as the survivors possess the power of dealing with the balance. In dealing with executorship accounts, the act of one executor or administrator is legally the act of all, and a banker is

justified in paying cheques drawn by a single executor without authority from the others; but it is advisable for a banker to obtain such a written authority, as although a single executor can bind the estate, he cannot bind the other executors personally. In transferring the balance of a deceased customer's account to that of his executor, a banker requires the probate of the will to be exhibited to him, or in case the deceased died intestate, a copy of the letters of administration. Then, upon satisfactory proof of the identity of the executors or administrators, the balance is transferred to an account usually opened in the executors' names as such.

Where the power to sign is given to a single executor, and this executor has also a private account with the same bank, the banker should be cautious in his dealings, or he may be held liable in case the executor misapplies the money of the estate to his own use. The law in such a case was laid down by Lord Cairns in the case of *Gray* v. *Johnston*: "In order to hold a banker justified in refusing to pay a demand of his customer (the customer being an executor, and drawing a cheque), there must, in the first place, be some misapplication, some breach of trust intended by the executor, and there must, in the second place, be proof that the bankers are privy to the intent to make this misapplication of the trust funds; and to that, I think, I may safely add, that if it be shown that any personal benefit to the bankers themselves is designed or stipulated for, that circumstance above all others will most readily establish the fact that the bankers are in privity with the breach of trust which is about to be committed."

As an example of what was meant, we will suppose a man to have a private overdrawn account, and also an executor account or trust account with a credit balance, on which he possessed the power to sign alone. The bankers press him for payment of his overdraft; he thereupon transfers a sum from his executor or trust account in satisfaction of it. If the executor defaulted, the bank would, in all probability, be compelled to refund to the estate the sum so transferred.

A trustee, unlike an executor, cannot by his own act bind his co-trustees. Whenever possible, a banker declines to open an account in the name of trustees as such, and prefers to treat it as an ordinary joint account; but should he feel compelled to recognise the trust character of the account, he should not accept an authority for one or more trustees to act for the whole body, as it is exceedingly doubtful whether he would be absolved from liability in case of the default of the acting trustee. If the affairs of a trustee come into a court of law, every protection possible is afforded to the trust funds by the court, and therefore a banker cannot be too wary in his dealings with them. If one of a body of trustees die, it should be inquired whether the deed of trust empowers the survivors to act, before giving them the power to do so; in the case of an executorship account, the power to act devolves naturally upon the survivors.

In business partnership accounts any partner can bind the firm by his own acts; moreover, any one who by word or deed leads others to believe that he is a partner, is liable on any contracts entered into upon the faith of such representations, and every partner is personally liable for all the obligations entered into by the firm.

If a partner retires from a firm which has an overdrawn account with a bank, he is not absolved from personal liability until the whole of the overdraft shall have been paid; but it must be noted in this connection that it is a legal maxim that the first item on the debit side of a current account is presumed to be discharged or reduced by the first item in priority of time on the credit side. If therefore in such a case it is desirable to

retain a claim upon the retiring partner, a new account should be opened when notice of the retirement is given to the bank.

In opening an account with a company registered under the Companies Acts, a banker usually requires a copy of a resolution passed by the directors, and signed by all or by the chairman, and countersigned by the secretary, authorising the banker to pay cheques signed in the manner the authority shall indicate.

If a company requires to overdraw its account or to borrow money, it is necessary for the banker to see a copy of the memorandum and articles of association of the company. By these documents the powers of the company are defined and controlled. It is not always expressly mentioned in a memorandum of association that a company has power to borrow money, but in the case of a trading company at all events this power is held to be implied, unless it is contrary to anything contained in the memorandum. If a company through its officers commits any act in excess of the powers so defined, it is held to be acting *ultra vires*, and the company is not bound by any such contract. A banker often has to assist in the floating of a new company, and he must remember that under the provisions of the Companies Acts of 1900 a company cannot enter into any contracts or borrow money until certain steps have been taken and a certificate has been issued by the Registrar of Public Companies, to the effect that the company is entitled to commence business. The issue of such a certificate is conclusive evidence that the necessary preliminaries have been properly carried out.

When a customer has satisfied his banker as to the manner cheques are to be drawn on the account, there is then a contract between them that the banker shall honour the cheques of the customer, if they are in order, so long as the customer has any money to his credit. In the event of the wrongful dishonour of the customer's cheques, he has a right to sue the banker for damages, but the holder of the cheque has no right against the banker, as there is no contract with him. He must have recourse against the drawer of the cheque, and any suit against the banker must be brought in the drawer's name.

A banker is not bound to pay his customer's cheques drawn against cheques in the course of collection which have not yet been credited, and even when a cheque is credited before it is cleared, it is the custom of many bankers, if it seem desirable to them, to return the customer's cheque unpaid with the answer, "Effects not cleared," if there is not sufficient money on the account exclusive of the uncleared cheque. Should a banker give a customer permission to overdraw his account to a certain extent for an agreed period, the banker must not dishonour his customer's cheques without notice before the expiration of such period, on the ground that circumstances have occurred causing him to reconsider his decision; but should a customer commit an act of bankruptcy, a banker is bound to refuse payment of his cheques whatever the state of his account, or he may be held liable to refund to the trustee in bankruptcy. It was decided by the Court, however, *In re* Walsh, 52 L.T. Rep. 694, that the mere calling together of a debtor's creditors and the offer to them of a composition is not an act of bankruptcy. No banker will knowingly open an account with an undischarged bankrupt, nor would it be safe for him to do so in the case of the wife of an undischarged bankrupt who was carrying on the husband's business.

The same obligation to refuse payment of a cheque exists when notice of the death of the drawer is received, or, in cases where the drawer signs

as agent, the death of the principal. If, however, an agent empowered to sign on his principal's account dies, and a cheque signed by him is presented after notice of death, a banker may yet pay the cheque.

In Scotland the holder of a cheque unpaid for want of funds acquires a lien on the balance of the account; if, therefore, a smaller cheque is afterwards presented, the banker must not pay it, although he has sufficient funds. This is not law in England, however.

It has been decided that a banker has no right to close a customer's account without giving him reasonable notice. In the case of *Buckingham* v. *The London and Midland Bank*, the plaintiff had a loan account secured by a mortgage on some houses and also a current account, with a balance standing to his credit. On entering the bank one day he was informed by the manager that the bank was dissatisfied with the value of the security, and that he must consider the account closed, the balance to his current account, amounting to £160, having been transferred in reduction of the loan account. The plaintiff informed the manager that certain bills accepted by him and domiciled with the bank fell due the next day, and asked that they should be paid. This was refused, however, and the bills dishonoured. He then sued the bank, and obtained a verdict in his favour, with damages for injury to his credit. It was decided by the jury that the plaintiff was entitled to a reasonable notice before the closing of his account, and that such a notice had not been given.

If a cheque is presented to a banker for payment and there are not sufficient funds to meet it, owing to the banker having debited the customer with his charges for keeping the account, it would not be wise for him to return the cheque unpaid, unless the customer has received notice of the charge. But should it be shown that the charge was a customary one, debited periodically to this particular account, it is probable that the banker would not be held liable for returning the cheque.

If a banker receives a "garnishee order," he is entitled to refuse payment of all cheques presented after receipt of the order, although the balance in his hands may exceed that attached by the order. A "garnishee order" is an order granted to a creditor who has obtained judgment against his debtor, attaching "all debts owing or accruing due" from a third person to the debtor. In the case *Rogers* v. *Whiteley*, the plaintiff had a banking account with the defendant bankers, upon whom a garnishee order for £6000 was served at a time when the plaintiff's balance was £6800. The defendants dishonoured cheques amounting to less than the surplus of £800, but the plaintiff was unable to sustain his suit for damages.

Besides the collection and payment of cheques for a customer who has a current account, a banker performs various other duties in the course of his business. In the first place, he receives money on deposit bearing interest. It is not the usual practice of English bankers to allow interest on current accounts, though sometimes interest on the minimum monthly balance is given by special arrangement.

English bankers, however, receive money repayable usually at seven days' notice with interest at a rate which is as a general rule 1½ per cent below the Bank of England discount rate. Cheque-books are not issued to those who have only a deposit account. Should the depositor wish to withdraw a part or the whole of his account without giving the stipulated notice, the banker is usually willing to do so, the customer forfeiting seven days' interest in lieu of notice. The deposit receipts issued by bankers are marked "not transferable," and are in all probability not negotiable instruments at all.

The collection of dividends, interest, and coupons is another duty undertaken by bankers. In the case of dividends on stocks or shares registered in the customer's name or inscribed in the books of the Bank of England, it is usual for the customer, if he wishes the dividends to be paid direct to his banker, to sign an authority requesting the company or the Bank of England to forward them as desired, and forms for this purpose can be supplied by the banker.

As a rule no company will recognise trustees as the holders of shares, which must be registered simply in the joint names. Neither will they as a rule pay over the dividends to the credit of a party other than the registered holders. If the dividends are to go to the credit of a third party, instructions should be given to the collecting banker and not to the secretary of the company. In collecting coupons, the customer may either keep the bonds in his own possession or in a box at the bank, and cut off the coupons himself before handing them to the banker for collection, or he may lodge the bonds with his banker, when the latter will himself cut off and collect the coupons. When bonds are so deposited with a banker, he will usually watch the results of the drawings if they are redeemable by lot and inform the customer, but it is not certain whether a banker is liable to the customer for neglect of this. If the customer cuts off his own coupons, he should hand them to the banker not later than a fortnight before they fall due, if he wishes for the prompt receipt of the proceeds. Should coupons be payable abroad, it is usual for bankers to sell them in London to an agent when possible. Income tax on coupons is always deducted by the banker who collects them.

Bankers accept "standing orders" from their customers to pay subscriptions to clubs, charities, and similar institutions; they will also remit money abroad or collect drafts payable abroad. When lodging with a banker for collection bills payable abroad, a customer should always give full instructions as to the course to be followed in case of dishonour, and should documents of title be attached to the bill, whether these documents are to be surrendered to the drawer upon acceptance or upon payment. Bills with such documents attached should be drawn to the order of the shippers and endorsed in blank.

Another function of bankers is the issue of "Letters of Credit" and "Circular Notes." A Letter of Credit is a request from one banker to a correspondent or agent authorising him to honour the drafts of the person named in the Letter of Credit, and promising to pay such drafts when presented. The correspondent is usually advised that such a Letter of Credit has been issued to a third person, and a specimen of the latter's signature is forwarded for the purpose of identification. When the correspondent makes any payment under a Letter of Credit, he endorses the amount on its back and usually charges a small commission to recoup himself; in some cases, however, he draws upon the issuer for the amount of the commission. A Circular Letter of Credit is one addressed to a series of correspondents named in another document called a "Letter of Indication."

"Circular Notes" are drafts drawn by bankers for a round sum, usually £10, upon a number of foreign correspondents, in favour of the customer to whom they are issued. The drawees are in this instance also enumerated in a letter of indication, and as this contains the specimen signature of the payee, it should not be kept in the same receptacle with the Circular Notes when travelling, so that in case of loss or theft the one will be useless to the finder without the other, and forgery be less easily accomplished.

Among the minor duties which a banker is called upon to fulfil may be mentioned the custody of bills not due which a customer does not wish to discount; such bills are called "Short Bills," and the banker presents them as they fall due, without special instructions from the customer, and credits the proceeds to the account.

If the holder of a bank-note accidentally destroys or loses it, he can on reference to his banker obtain a form of indemnity, on receipt of which, properly executed, the Bank of England will pay the amount of such notes.

Customers can also buy and sell stocks and shares through their banker. Nothing but the usual broker's commission will be charged; but the banker usually arranges with the brokers whom he employs to halve such commission with him. A banker will not as a rule undertake the responsibility of advising his customers as to investments.

Finally, a banker will take charge of boxes or parcels for his customers and hold them on safe custody. For this a banker makes no charge, neither does he take any cognisance of the contents of the boxes, which should be securely locked or sealed. In doing so a banker acts as a bailee and not "as a banker," and his liability in case of loss, damage, or delivery to the wrong person has not yet been settled. A case came before the courts in 1896, but was settled by a compromise, and no legal precedent was therefore made.

In this case, *Langtry* v. *The Union Bank of London*, the plaintiff lodged with the defendant bank a box containing jewels stated to be worth £35,000. This was delivered by the bank to an unknown person on a forged order. Thereupon Mrs. Langtry sued the bank, and by a compromise out of Court it was arranged that verdict should be given for the defendants on payment by them of £10,000.

The fact that the bank did not fight the case points to the belief that their position was a weak one. The opinion given by the Central Association of Bankers, after due consideration of the case, is that if valuables deposited with a bank for safe custody are lost, stolen, or destroyed by fire, the banker is not liable unless negligence can be proved against him. If he took such reasonable precautions as a prudent man would take in the case of his own valuables, he would be held exempt from liability. If, however, the banker delivers them on a forged order, it would probably be held to be wrongful conversion of the goods, and the banker would be liable apart from any question of negligence. The Central Association goes on to recommend the adoption of a form of receipt for such valuables, with a blank order for delivery printed on the back. If the banker refused to deliver the valuables except on the production of such receipt, it would make it more difficult for a fraudulent party to obtain possession.

Advances and Security.—A banker lends money in various ways and on various kinds of security. In the first place he discounts bills for a customer; that is to say, a banker buys a bill which is due at a future time and gives his customer immediate credit for the amount of the bill, charging on the transaction what is called by bankers "discount," which, however, is not true discount but interest. That is to say, if true discount were charged the net amount which is credited to the customer should be such as with interest at the arranged rate would equal the nominal amount of the bill. But the banker charges interest on the full amount of the bill and gains by doing so the interest on the discount.

The rate of discount which is officially quoted by the Bank of England, and is known as the "bank rate," is the rate for what are called "first-class"

bills only; that is to say, bills accepted by parties well known in the City of London and on which there is the minimum of risk attaching.

It cannot be expected that a banker shall discount ordinary trade bills at this rate, as he has to provide against the danger of the bill proving worthless. A banker takes the state of his customer's account into consideration, and if the account is not well kept he may, and frequently does refuse to discount the proffered bill. If he decides favourably he will next make a confidential inquiry of the banker with whom the bill is domiciled, and on the nature of the answer will depend his final decision. Bankers often keep an "Acceptor's Book," in which are kept any particulars they may acquire of the acceptors of bills which periodically pass through their hands. As ordinary trade bills frequently recur through the same channels a banker gradually acquires some knowledge of the parties whose acceptances he discounts. Should one be dishonoured the particulars of it and the answer on it will be duly registered in the "Acceptor's Book" and he will, if he think fit, refuse to discount any more accepted by the same party.

The class of bills which a banker prefers to discount are those which are customarily drawn in certain trades, chiefly by manufacturers and wholesale dealers upon the retailer. In some trades it is customary for the retailer to pay for the goods he buys by means of bills at a certain recognised currency, frequently three months. Unless the manufacturer has a large capital he finds it preferable to discount these bills with his bankers, and such bills are as a rule readily accepted by the latter. This custom of paying by means of bills is, however, slowly giving way to payment by cheques, and the number of trade bills in circulation is very much less than was the case twenty or thirty years ago. There is another class of bills which is not so satisfactory to a banker, those drawn by private individuals in payment of goods or ordinary household expenses; these usually indicate shortness of money on the part of the acceptor and an anticipation of his ordinary sources of income, and are to be looked at with caution. The third class of bills is generally avoided by bankers altogether when they are recognised, though this is not so easy; these are accommodation bills. If a man accepts a bill for the accommodation of another without receiving value for it, he is nevertheless liable to a holder in due course, though there is usually an implied contract that the accommodated party shall provide for the bill before presentation. As a rule a man does not borrow money by means of an accommodation bill until the ordinary methods are exhausted, and so this class of bills is looked upon with suspicion. A banker is never certain how far this method of accommodation may extend, and it is a matter of no great difficulty for three or four individuals to combine and mutually accept bills drawn upon each other without any business transactions between them and without capital or resources. Such a course of procedure may attain very large proportions before it is found out, and then probably a crash will ensue. The commercial crisis of 1857 was attributed at the time to the extensiveness with which accommodation bills were created among foreign firms who drew on agents in London. These agents accepted bills drawn on them without value passing, on payment of a commission and on the understanding that they should be paid before maturity; "acceptances on open credit" they were called, and they were usually paid by the substitution of a fresh set of bills; this continued until the crash came and a panic ensued. Experience only will teach a banker to distinguish accommodation bills, but they are generally drawn for round sums and at as long dates as bankers will accept.

Bankers prefer to discount bills drawn at short dates, as there is not so

much time for the position of his customer to change, and he can consequently more easily alter his policy in dealing with him if he should begin to distrust his financial position; many banks refuse to discount bills having more than six months to run. A banker always requires his customer to endorse bills before discounting them, otherwise he would have no recourse against him if the bills were unpaid. A banker is not acting as his customer's agent when he discounts bills; he buys the bills and becomes a holder for value, and as such claims on his customer as endorser in case of dishonour.

Of course, in lending money by means of discounts, a banker requires no further security beyond the bill; the transaction is complete in itself; he has, first of all, the right against the acceptor of the bill; if this fail he has the right against his customer as endorser and perhaps as drawer; if the bill is drawn by a third party he has a further recourse against him as drawer.

A second method of lending money is by means of promissory notes; a banker will often, in the case of a customer of good standing, advance money to him by discounting his note of hand for a short period, say three or four months. He may require his customer to produce a third party who will join with him in a "joint and several" promissory note, in which case the banker has a right against each of them for the full amount of the bill. The advantage to the customer of borrowing money in this way is that the debt cannot be recalled before the maturity of the note. The banker buys a future right when he discounts the note, and until the latter matures he has no right of recourse against his customer. The advantage to the banker is that the customer is expected to keep some part of the proceeds to his credit, or else he will be required to pay a further commission on the management of his current account, should the balance kept prove unsatisfactory.

Besides these two methods of lending money, a banker can grant his customer a loan or a "cash credit," as it is called in Scotland, or he may allow him to overdraw his current account.

In the former case a separate "loan account" is opened in the customer's name and an arrangement is made as to the amount which may be drawn on this "loan account." Amounts are then transferred from this account to the current account as the customer requires them, and he repays them at his convenience, subject, of course, to the arrangements made with the bank manager. As a general rule the bank retains the right to demand payment of the whole amount when it considers necessary. If a customer has a loan he is usually expected to keep a sufficient balance on his current account to remunerate the banker, the amount of which, of course, varies with the character of the account. If the customer prefers an overdraft, he becomes entitled to draw until he has a debit balance to the extent agreed upon. In this case he pays interest on his debit balance and a commission to cover the expenses of managing his account; in a loan account no commission is as a rule charged, as the customer is still required to keep a credit balance. In dealing with these two methods of lending money, we have to discuss the question of security. Of course there are cases in which a banker feels sufficient confidence in his customer to advance money temporarily without security, but these cases are exceptions.

Briefly speaking, the essentials of an ideal banker's security are not so much ultimate security as immediate convertibility. Advances at short dates on convertible security constitute the class of business most sought after. A banker does not aim at providing capital wherewith a man shall

trade; he chiefly desires to tide a man over temporary want of available assets, or to give a man the means of making a successful start in business. A banker's liabilities are nearly all to pay gold on demand, and he cannot afford to lock up his assets more than is necessary. Many a banking catastrophe has been occasioned, not by insolvency but by temporary lack of available assets due to bad business management.

The most general form of security which a banker possesses is afforded by the lien which he holds on all negotiable instruments deposited with him as a banker. A lien is a right to retain an article of value pending the payment of a debt due. This may be a "particular lien"; that is to say, it may attach to an article only until the debt due on that individual article is settled: all tradesmen possess a particular lien on an article deposited with them for repair or for any purpose necessitating the expenditure of money or labour. A "general" lien attaches to articles in possession of the debtor as against all debts due, however incurred. This "general lien" is possessed under the common law by bankers, brokers, factors, innkeepers, solicitors, and wharfingers.

This general lien implies the right to retain but not the right to sell, and it attaches in the case of bankers only to such articles as are deposited with them *as bankers;* thus it was held in the case of *Brandao* v. *Barnett* (1846) that securities lodged with a banker for the sole purpose of being held by the latter on safe custody are not subject to the banker's lien. The plaintiff's agent, named Burn, kept an account with the defendants and had several tin boxes in which the securities of his principals were lodged with the bank for safe custody; he was in the habit of taking these out from time to time and handing them to the banker for the collection of interest due. On one occasion when exchequer bills amounting to £10,000 were so dealt with, Burn, owing to illness, omitted to replace them in the box and left them in the hands of the bank. Burn was then made bankrupt and the bank claimed a general lien on the exchequer bills to secure the payment of the overdrawn account. The House of Lords, however, held that the lien did not attach to the bills because they were left with the banker with the intention of being replaced in the box for safe custody and that therefore they were not held by the defendants as bankers, but as bailees; there was no *duty* imposed upon the banker of collecting the interest upon these bills, which had been taken from the box by the plaintiff and handed to the banker for a special purpose.

It is, however, a general practice for the customers of a bank to entrust to them bonds, certificates, scrip and such securities, not only for safe custody, but in order that the banker may collect the dividends as they fall due without special instructions from the customer; in this case it seems clear that it is the duty of the banker as such to duly collect the interest, and bank prospectuses often contain clauses expressing their willingness to undertake this class of business. If such is the case, these securities are lodged with the bankers in the ordinary course of a banker's business, and, if so, the general lien of a banker will attach to them.

The general lien of a banker attaches also to cheques deposited with him for collection, and to bills deposited for discount, or held by the banker "short," but it does not extend to plate and jewellery held in his strong-room on the customer's behalf. If a customer has several accounts with a banker or accounts at several branches, the general lien covers all of them and the banker enjoys the right of "setting off" one against the other; should one of the accounts, however, be a trust account and the banker be affected with notice that this is so, this will not be covered by the banker's lien

Besides his general lien a banker may create a conventional lien, or lien based on an agreement between himself and his customer, and when the two are inconsistent a conventional lien is held to override the general lien. A banker often lends money on securities which he accepts under a "memorandum of deposit," which is an ordinary agreement, stamped with a 6d. stamp and generally granting the bank a power of sale. In the case, *in re Bowes, Earl of Strathmore* v. *Vane*, Bowes deposited a life policy for £5000 under such a "memorandum of deposit," which stated that the policy was lodged to cover advances not exceeding £4000. Bowes died and the bank claimed a general lien on the policy for the full amount, but it was held that the general lien was excluded by the terms of the conventional lien created by the memorandum.

Securities deposited with a banker to cover an advance may either belong to the debtor or they may be "collateral." A collateral security is obtained by the pledge of valuables belonging to a person other than the debtor. If a banker holds collateral security he can, in the event of the bankruptcy of the debtor, claim against the estate for the whole of his debt and then realise his security to satisfy the remainder of his claims. If, however, the securities pledged are the property of the debtor, they must be realised before the banker claims on the estate, and his claim can only be for the balance of the account remaining. The private property of a partner pledged to secure the debt of the firm constitutes a form of collateral security.

The first form of security to be considered is that of the deeds of title to land. Although this is generally considered one of the most desirable forms of security, it has the drawback from the banker's standpoint that it cannot always be readily realised. A banker will not as a rule accept a second charge on landed property as security for an advance, and if he is prudent he will insist on the deposit of the title deeds, which should be submitted to a solicitor and a report obtained as to their genuineness and the validity of the holder's title. He may then either take a legal mortgage or they may be deposited under a memorandum of deposit, which constitutes an equitable mortgage. The memorandum should contain a clause stating that the deeds are to secure future as well as existing advances, otherwise, as we have seen above, the original advance may be held to be paid off by the first entries on the credit side of the account, and a new advance contracted, although there may have been a continuous debit balance. This is called the "general rule as to the appropriation of payments."

It is also advisable to have a clause binding the depositor to give a legal mortgage when called upon. The rule of the courts is that a legal mortgage has priority over an equitable mortgage. If, however, the banker retains the title deeds it is hardly possible for a legal mortgage to be created; caution should therefore be used in parting with deeds deposited under a memorandum, even though they should be required for a short time only.

If the banker receives notice of a contract of sale of land on which he holds an equitable mortgage, he should at once stop the account and make no further advance on the security. In the case of *London County Banking Co., Ltd.*, v. *Ratcliffe*, the bank continued to make fresh advances after such notice, and it was held in the House of Lords that no charge on the land was created by such advances after notice of sale, and that the original advance had been extinguished by the payments made by the defendant to the credit of his account since the date of the contract of sale. It may be mentioned that the mere deposit of title deeds without a memorandum constitutes an equitable mortgage. The disadvantage of a second charge

on landed property is that, by what is known as "tacking," the holder of a third mortgage may under certain circumstances join his charge to that of the first mortgagee, and the two together take precedence of a second mortgage, the holder of which finds himself in a considerably worse position than he anticipated.

The second form of security to be considered is that of stocks and shares. This is perhaps the largest class of securities with which a banker deals, and the debentures of a first-class company—a "gilt-edged" security, as it is called—are perhaps one of the most satisfactory a banker can possess. Bankers do not care to advance money on mining shares and similar speculative undertakings, nor do they look with favour on shares which are not fully paid up, and a banker usually requires a considerable margin on the value of the securities to cover fluctuations in the market price.

With the exception of bearer-bonds and certain forms of scrip, which are transferable by mere delivery, all stocks and shares require to be transferred into the names of the banker or his nominees before a legal title to them can be obtained; such transfer must be registered with the company. If the transfer is not so registered, not only does the banker get no legal title, but his charge on the stock or shares may be postponed to a subsequent charge in favour of the company. Two cases are of special interest to bankers in this connection. In *The Bradford Banking Company, Ltd.*, v. *Henry Briggs, Son, and Company, Ltd.*, the bank obtained from a customer named Easby the deposit of certificates of a number of shares in the defendant company; they were not transferred into the bank's name, but notice of the deposit was given to the defendants, who, in acknowledging the receipt of the notice, wrote to the bankers as follows:—"We think it right to inform you that Mr. Easby is indebted to us, and that under a clause of our Articles of Association we have a first and permanent lien upon all shares held by him." The bank, however, proved that they had made no fresh advance to Easby since the shares were deposited, but that, on the other hand, the debt of Easby to the defendants had been paid since that date, and fresh ones contracted. For this reason judgment was given for the plaintiffs, on the ground that the defendants had received notice of the bank's charge on the shares, and that any subsequent advance by the defendant company only created a second charge on the shares, over which the charge of the bank took priority. The other case is *Powell* v. *London and Provincial Bank.* A man named Edwards was registered in the books of the Penarth Harbour Company as holder of £1000 stock, which was in reality held by him in trust, although, in accordance with custom, no note of the trust was made in the company's books. He deposited the certificate of this stock with the defendant bank as security for a loan, assuring them that he was the true owner. The deposit was made under a memorandum, in which Edwards promised to transfer the stock when called upon, in order to complete the bank's title. At the same time a signed transfer, with blanks for the name of the transferee, was executed by him. Some years after, the bank wrote to Edwards that, unless he reduced the advance, the stock would be transferred. This was done, and the stock was afterwards sold by the bank with the consent of Edwards. He eventually absconded, and when new trustees were appointed in his place, they brought this action against the bank for the amount of the stock and the dividends received by the bank in reduction of their advance by Edwards.

Judgment was given for the trustees on the following grounds:—

(1) No legal title to stock and shares can be acquired unless the stock

is transferred by deed executed by the transferor, and registered in the books of the company.

(2) Registration alone without transfer gives no legal title.

(3) The transfer executed by filling up the blanks left in the form was not a complete transfer, because it had not been redelivered after the blanks had been filled in.

(4) The bank had not acquired a legal title to the stock, and therefore their equitable title was postponed to the prior equitable title of the trustees.

Bonds to bearer are negotiable instruments transferable by delivery, and therefore the mere deposit of them for valuable considerations is sufficient to give a good title to a bank, provided they are taken in good faith and without knowledge of any defect in the title. It is necessary to note, however, that if the coupons are not attached to the bond, it is not a negotiable instrument.

The question as to what is knowledge or notice of defect, in the title to negotiable securities, received a curious solution in the case of *The Earl of Sheffield* v. *The London Joint-Stock Bank*. The bank advanced money on the deposit of, among other things, bonds to bearer by a customer who was a money-lender, and the House of Lords held that the bank was bound to inquire into the title of the pledger, knowing that he was in the possession of securities belonging to third parties. Lord Halsbury's opinion was as follows:—"The conclusion I draw from the facts proved, is that the bank knew very well the system of money-lending pursued by Mozley, and trusted to him that he would not over-pledge, so to speak, the securities of his customers. . . . If that be the true view of the facts, it is impossible to contend that the bank is entitled to the position of purchasers for value without notice. I think they had actual knowledge; but if they had reason to think the securities might be Mozley's own, or might belong to somebody else, I think they were bound to inquire." Lord Sheffield, to whom the securities belonged, claimed the right to redeem them for the sum actually advanced on them by Mozley, and this relief was granted by the House of Lords.

As to what classes of securities are to be considered negotiable instruments, since they are not defined by common or statute law, the custom of merchants is held by the Courts to determine the question of negotiability. In this connection it was held in *Picker* v. *The London and County Banking Company, Ltd.*, that it is not sufficient to prove that foreign bonds are negotiable in the country in which they were issued, but that negotiability in this country can arise from the custom of *English* merchants and business men only.

Another form of security for advances for a banker is a "guarantee" given by a third party. This, of course, is collateral security, and possesses the advantages of this class of security in the event of the bankruptcy of the borrower. A guarantee is an excellent form of security if the banker has thorough and trustworthy knowledge of the means of the guarantor, otherwise it is of uncertain value and may prove quite worthless.

A guarantee may be drawn on a sixpenny impressed stamp, unless it is made under seal, when an *ad valorem* impressed stamp is required. It may be individual, or joint and several, and if made by a firm each partner should sign separately. It should express the time till which it is to remain in force, or else, as is more usual among bankers, should be a continuing guarantee for the payment of "all money from time to time owing," with interest, commission, and other banking charges; and should

then further express the notice required for the guarantor to release himself from liability: the usual notice is six months.

Bankers sometimes make advances upon life insurance policies, though it is an unsatisfactory form of security, and no advance should be made exceeding the amount of the surrender value.

Finally, we have to consider the advances made by bankers upon documents of title to goods. This is a class of security which is largely in vogue in shipping circles, but is very seldom met with outside such circles. Under the Factors Act, which we shall shortly consider, bills of lading, dock warrants, delivery orders, and warehouse-keepers' certificates are all considered to be documents of title; but, speaking strictly, the first-named is the only true document of title, the transfer of which is equivalent to a delivery of the goods.

A bill of lading is defined by Lord Blackburn as "a writing signed on behalf of the owner of the ship in which goods are embarked, acknowledging the receipt of the goods, and undertaking to deliver them at the end of the voyage (subject to such conditions as may be mentioned in the bill of lading)."

As long as goods are at sea, or are held by the master of the ship under lien for unpaid freight, a bill of lading is the symbol of the goods themselves, and the endorsement of a bill of lading to another person transfers the property of the goods and the right to sue on them. It would appear, therefore, that bills of lading are negotiable instruments, since they are transferable by endorsement and delivery, and confer the rights above mentioned. But the holder of a bill of lading cannot, except under certain circumstances, pass to an endorsee a better title to the goods than he himself possesses: he only transfers the right to obtain possession of the goods, but does not necessarily transfer a good title. For this reason a bill of lading is called a quasi-negotiable instrument. It is a general and almost universal custom to draw bills of lading in sets of two or three, and a banker should take care to obtain possession of all the parts of a set before making an advance upon it, otherwise he may find himself fraudulently deprived of his right to obtain possession. It was settled in *Meyerstein* v. *Barber* that when two or more parts of a set are negotiated to different holders, the title of the transferee who is first in point of time prevails over that of a subsequent transferee; but a master or warehouseman is justified in delivering the goods to the holder who first presents one of a set. It would appear from these facts that a bill of lading is a poor form of security for a banker, because his title to the goods depends upon that of the transferor; but he is protected to a great extent by the provisions of the Factors Act. A great deal of the business connected with the shipping of goods and consigning them for sale is done through "mercantile agents" or "factors," and as there are necessarily many opportunities for fraud, and few means of recognising the true owner of such goods, the Factors Act steps in to protect those who have dealings with such agents. "Where a mercantile agent is, with the consent of the owner, in possession of goods or of the documents of title to goods, any sale, pledge, or other disposition of the goods, made by him when acting in the ordinary course of business of a mercantile agent, shall, subject to the provisions of this Act, be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the person taking under the disposition acts in good faith, and has not at the time of the disposition notice that the person making the disposition has not authority to make the same" (Factors Act 1889, clause 2). Under the provisions of this Act, not only bills of lading but

dock warrants and delivery orders are documents of title, and the pledge of such documents is deemed to be a pledge of the goods. A dock warrant is a document issued by a dock-keeper, stating that certain goods are held by him deliverable to a person named. A delivery order is an order issued by the owner of goods to a dock-keeper, requesting him to deliver the goods to a person named. The unpaid vendor of goods has the right of stopping the goods "in transitu," in case the buyer becomes bankrupt before obtaining possession of the goods; but if the documents of title to the goods have come into the hands of a third party, who took them for valuable consideration and without notice, this right of stoppage is defeated. If, then, a banker advances money on documents of title to customers whom he knows to be brokers or factors, he is in most cases protected from the results of any defect in the pledgor's title. It is necessary to state, however, that the master of a ship undertakes no responsibility as to the contents or quality of the goods he ships, and merely acknowledges the receipt of so many packages. The banker advancing on bills of lading is therefore somewhat at the mercy of the shipper.

A banker often advances money on bills of lading by buying bills of exchange drawn on the consignee with the bills of lading attached. The bill is of course not accepted at the time the banker takes it, but the bill of lading is security for the payment of the bill of exchange, and the former is not delivered to the consignee until the latter is paid or at least accepted, according to instructions.

The Outlook.—Before closing, we must glance at the present condition of banking and the outlook before us. Perhaps the most striking feature of recent banking is the fact that for thirty-four years we have had no panic and no failure among the larger banks. One reason for this may be that until the last few years prices have been, generally speaking, on the downward grade, and speculation has been wanting. Speculative trade and the over-inflation of credit are the primary causes of commercial and banking crises; prices are artificially raised, and a semblance of unusual prosperity lulls people into security, until the bubble suddenly bursts, and in the reaction a general loss of confidence threatens danger to the foundations of our financial system. Experience has taught our larger commercial firms to work on a more secure basis than formerly; they are better capitalized, keep larger reserve funds, and conduct their business on more cautious lines. Speculation has certainly at times been rampant, as witness the South African boom in the early 'nineties, but the speculation has been open and recognised as such, and has been confined to certain limited classes. Another reason for our continued safety is to be found in the better administration of our banks. There has been a strong tendency towards the evolution of a more powerful class of bank, with more capital and a better reserve fund than their predecessors; all joint-stock banks and most private banks issue balance sheets, and the increased publicity tends to a steadier business tone. But yet our utter dependence on the Bank of England is unsatisfactory. The bank still holds the premier position by virtue of its reputation, its position as the Government banker, and as the holder of the reserve; but as regards the volume of business done it is outclassed by several of the leading joint-stock banks, and yet these powerful rivals of the bank are dependent upon it for all supplies of gold beyond what suffices for times of commercial peace. Yet when we look at the recent tendency of modern banking we wonder if there is any chance of reform in this direction. Branch banks are springing up almost in every street in London, competition is almost as acute in the country,

and the expenses of management seem to be increasing at a quicker rate than earnings. Under these circumstances the prospect of the leading joint-stock banks voluntarily saddling themselves with the incubus of keeping a cash reserve does not seem attractive. London bankers now keep their reserve cash either at the Bank of England or on short loan—that is, money lent on call or repayable on short notice to stock and bill brokers. The money lent to the Bank of England is a liability of the bank to that extent to pay gold when called upon, and if the London bankers withdrew their deposits in gold it would drain the bank of almost the whole of its reserve bullion. Moreover, it is calculated that from thirty to forty millions sterling of English bills are held by foreigners abroad, and these all incur liability to pay gold. If at a time when the bank reserve was low a large proportion of these bills had to be liquidated in gold, we can easily see that the result might be extremely disastrous, as the reserve of the bank does not exceed on the average twenty millions.

It is at first sight a matter of surprise that London is the great market for gold for the whole world, and yet her reserve of gold is considerably less than that of France, Russia, or Germany. This fact is explained, however, when we consider that London is the one free market for gold, and that no hindrances are placed on the export of gold. Consequently it is difficult to restrain a foreign drain. The only method of inviting gold is to raise the rate of discount, a rate which is only in part controlled by the Bank of England. The consequence, however, of raising the rate is to limit credit in England, and to hinder productive enterprise, so that it is a power which needs delicate handling. The fact that the London bankers keep their balances with the Bank of England enables the latter to use these in the creation of credit, by which the liability to pay gold is also increased. If these reserves were kept in the bankers' own cellars, not only would there be a reserve in London which would enable the banks to meet all ordinary demands independently of the Bank of England, but the liability of the Bank of England would be so much less, and she would be in a better position for meeting the foreign demands. Of course we should have to pay for this by the loss accruing from the idleness of capital represented by the reserves of the banks, but if it is true that we are sailing too close to the wind, and that our position is not secure enough, this is unavoidable.

It has often been suggested that we should provide an ultimate reserve for use in the emergency of a panic by following the example of Germany in dealing with her note issue.

Every note issued by the Bank of England beyond the £17,750,000 issued on securities has to be secured by the deposit of gold to a like amount in the issue department. In Germany the bank is allowed to break this rule and issue without the deposit of gold on payment of a fine of five per cent, and this power is frequently used, the fines in the year 1898 amounting to £96,370. If adopted in England this would set free a fund amounting on the average to nearly ten millions for use on emergency, but it would not strengthen our position in ordinary times. It would only prevent what happened in 1847, 1857, and 1866, when the Bank Act had to be suspended and recourse had to an Act of Indemnity.

Of course it would be a matter of time for our joint-stock banks to collect cash reserves of their own; any attempt to provide them hurriedly would utterly derange the money market, but it would be rendered easier by the greater unanimity which would prevail between the interests of the Bank of England and the other banks. Formerly the market rate of

discount was controlled by the Bank of England rate, but such is by no means the case now. The bank is overshadowed at times by her larger rivals, and the bank rate is forced down by the latter below the point which the bank considers necessary or safe, because the joint-stock banks are more concerned in getting their spare cash on to the market than in protecting the Bank of England reserve. If all shared the liability of keeping a reserve, there would be a community of interest and a general combination to take such measures as are necessary for safety. Such combination occurs now only in the face of immediate danger, as in the joint guarantee of Barings by the clearing bankers in 1890, but it takes time to materially increase our stock of gold, and such combination is, under present circumstances, too late for security. We want a greater community of interest and sharing of responsibility in times of commercial peace.

For those who wish to pursue the study of banking at greater length the following works are suggested:—

History and Theory of Banking: GILBERT'S *History, Principles, and Practice of Banking.* Edited by A. S. Michie.—H. D. MACLEOD'S *Theory and Practice of Banking.*—W. BAGEHOT'S *Lombard Street.*—C. M. COLLINS. *The Law and Practice of Banking in Ireland.*—ARTHUR CRUMP. *The English Manual of Banking.*—JOHN DUN. *British Banking Statistics.*—T. HANKEY. *Principles of Banking.*—W. S. JEVONS. *Money and the Mechanism of Exchange.*—A. W. KERR. *History of Banking in Scotland.*—R. H. INGLIS PALGRAVE. *Dictionary of Political Economy.*

The following Parliamentary Papers can also be consulted with advantage:—*Report of the Select Committee appointed to inquire into the high price of Bullion, 1810. Report of the Select Committee appointed to inquire into the renewing of the Bank Charter Act 1832. Report of Select Committee on Banks of Issue, 1840. Report from Select Committee on the operation of the Bank Acts of 1844 and 1845. Report of Select Committee on Banks of Issue, 1875.*

The Practice of Modern Banking: *Journal of the Institute of Bankers.—Questions on Banking Practice* (published for the Institute of Bankers).—*Legal Decisions affecting Bankers* (edited by Sir John Paget).—T. B. MOXON'S *Practical Banking.*—J. HUTCHISON. *The Practice of Banking.*

ERNEST SYKES.

Bankruptcy (England).

INTRODUCTION 269
ACTS OF BANKRUPTCY . . 270
THE PETITION 271
RECEIVING ORDER . . . 272
STATEMENT OF AFFAIRS . . 273
FIRST MEETING OF CREDITORS . 276
ADJUDICATION 277
PUBLIC EXAMINATION . . 278
CONTROL OVER DEBTOR . . 279
DISQUALIFICATIONS OF BANKRUPT 279
DISCHARGE 279
OFFICIAL RECEIVER . . . 282
SPECIAL MANAGER . . . 285
COMMITTEE OF INSPECTION . 285
TRUSTEE:—
Appointment . . . 287
Remuneration . . . 288
Control by Board of Trade . 290
Directions of Court . . 290
Powers of Trustee . . 291
Duties of Trustee:—
(*a*) *as regards moneys* . 293
(*b*) *as regards accounts and audit* . . . 294
Removal 297
Resignation . . . 298
Release 298
PROOF OF DEBT . . . 299
PROOF IN RESPECT OF BILLS OF EXCHANGE 301
DEBTS PROVABLE . . . 303
PROXIES 305
PROPERTY DIVISIBLE . . 305
EXEMPTION FROM STAMP DUTY . 307
AFTER-ACQUIRED PROPERTY . 308
DISCLAIMER OF ONEROUS PROPERTY 308
EFFECT OF BANKRUPTCY ON ANTECEDENT TRANSACTIONS:—
Relation Back . . . 310
Fraudulent or Undue Preference 310
Fraudulent and Voluntary Conveyances and Settlements 311
Ante-nuptial Settlements . 313
Protected Transactions . 313

For *Bankruptcy Law in Ireland*, see "IRISH BANKRUPTCY LAW, II.

EFFECT OF BANKRUPTCY ON CREDITORS :—
Execution Creditors . . 314
Landlord 314
Secured Creditors . . 315
Unsecured Creditors . . 316
DISTRIBUTION OF PROPERTY :—
Joint and Separate Estates . 317
Priority of Payments . 317
Preferential Creditors . 318
Dividends 318
Postponed Creditors . . 319
ARRANGEMENTS IN BANKRUPTCY 319
BANKRUPTCY AS REGARDS—
Infants 320
Lunatics 320
Married Women . . 320
Deceased Insolvents . . 321
SMALL BANKRUPTCY . . . 321
ADMINISTRATION ORDER . . 321
DEEDS OF ARRANGEMENT :—
(*a*) *Deed of Assignment* . 323
(*b*) *Deed of Composition* . 326
(*c*) *Deed of Inspectorship* . 327
(*d*) *Letter of Licence* . . 327

INTRODUCTION.—It is not the intention in the present article to deal exhaustively with the history of English Bankruptcy Law, but a brief reference thereto will no doubt be desirable.

The first statute dealing with the present subject was that of 34 & 35 Henry VIII. c. 4, "Against such as do make Bankrupt," and it is there recited that "divers and sundry persons, craftily obtaining into their hands great substance of other men's goods, do suddenly flee to parts unknown, or keep their houses, not minding to pay or restore to any of their creditors their debts and duties, but at their own wills and pleasures consume the substance obtained by credit of other men for their own pleasure and delicate living, against all reason, equity, and good conscience."

Thus commencing with what was obviously an attempt to legislate against fraudulent indebtedness, statute after statute has been passed, as experience prompted legislation, so that in a little more than 350 years some thirty-eight Bankruptcy Acts have been passed. The principal Act at present in force is that of 1883 (46 & 47 Vict. c. 52), but important modifications are contained in the Act of 1890 (53 & 54 Vict. c. 71) and the Preferential Payments Act of 1888 (51 & 52 Vict. c. 62). Of the other statutes still in force dealing with bankruptcy (or insolvency), the more important are 13 Eliz. c. 5 (fraudulent conveyances), the Debtors Act 1869 (32 & 33 Vict. c. 62—punishment of fraudulent debtors), and the Deeds of Arrangement Act 1887 (50 & 51 Vict. c. 57), which latter provides for the registration of "deeds" of arrangement whereby the affairs of a debtor are to be administered *otherwise* than in pursuance of the law for the time being in force relating to bankruptcy.

The records show that private arrangements are largely resorted to, for whereas the annual average number of (adjudicated) bankrupts during the last fifteen years is a little over 4000, the annual average number of private arrangements during the same period is only a little short of 4000; in other words, the methods of administration are almost equally divided. The reasons for this are at least twofold: creditors are not generally vindictive, and do not force a debtor into the Bankruptcy Court where the circumstances connected with the failure suggest misfortune rather than commercial malpractices; while creditors are firmly of opinion, whether rightly or wrongly, that the existing bankruptcy system is unduly costly, and that (from a purely "dividend" point of view) better results are obtainable from private administrations. This is, however, a debateable matter upon the merits of which it is not intended to enter here.

Briefly, the procedure in bankruptcy is somewhat as follows, any variations therefrom being pointed out in the more detailed references throughout this article. If a debtor commits an act of bankruptcy, any qualified creditor

may petition the Court to make a receiving order against him, upon the making of which the Official Receiver takes charge of the debtor's estate. A meeting of the creditors is called so soon as a statement of affairs can be placed before them, and thereat it is generally resolved by the creditors that the debtor be adjudged bankrupt, and a trustee and committee of inspection are appointed to administer the debtor's estate. Thereupon the Court duly adjudges the debtor bankrupt, and he is divested of his estate and submitted to a public examination. The bankrupt remains so until he is formally discharged by the Court, but the Court cannot consider his application for discharge until after the conclusion of the public examination. Comparatively few bankrupts, however, make *application* for their discharge—certainly less than 1 in 4; and as many applicants are either refused their discharge, while others are subjected to a lengthy suspension, the result is there are over 50,000 undischarged bankrupts in England at the present time (1902). There are reasons to account for this: (1) the cost of the application is often heavy and must, of course, be borne by the bankrupt himself; and (2) the difficulties of obtaining a discharge were increased by the Act of 1890. Under these circumstances, bankrupts apparently prefer not to trouble about their discharge, but rather to devote their attention to the evasion of the inadequate provisions of the law as to their disabilities while undischarged.

Acts of Bankruptcy.—A debtor commits an act of bankruptcy in each of the following cases:—

(*a*) If in England or elsewhere he makes a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally.

Note.—These arrangements must be registered under the Deeds of Arrangement Act of 1887, but the mere execution of such a "deed" constitutes an act of bankruptcy whether it be so registered or not (see "Deed of Arrangement," *infra*).

(*b*) If in England or elsewhere he makes a fraudulent conveyance, gift, delivery, or transfer of his property, or of any part thereof (see "Fraudulent Conveyances," etc., *infra*).

(*c*) If in England or elsewhere he makes any conveyance or transfer of his property, or any part thereof, or creates any charge thereon which would, under the Bankruptcy Acts, be void as a fraudulent preference if he were adjudged bankrupt (see "Fraudulent Preference," *infra*).

(*d*) If with intent to defeat or delay his creditors he does any of the following things, namely, departs out of England, or being out of England remains out of England, or departs from his dwelling-house, or otherwise absents himself, or begins to keep house.

(*e*) If execution against him has been levied by seizure of his goods under process in any action in any court, or in any civil proceeding in the High Court, and the goods have been either sold or held by the sheriff for twenty-one days.

Provided that, where an interpleader summons has been taken out in regard to the goods seized, the time elapsing between the date at which such summons is taken out and the date at which the sheriff is ordered to withdraw or any interpleader issue ordered thereon is finally disposed of, shall not be taken into account in calculating such period of twenty-one days.

(*f*) If he files in the Court a declaration of his inability to pay his debts or presents a bankruptcy petition against himself.

(*g*) If a creditor has obtained a final judgment against him for any amount, and execution thereon not having been stayed, has served on him in England, or, by leave of the Court, elsewhere, a bankruptcy notice under

the Bankruptcy Acts, requiring him to pay the judgment debt in accordance with the terms of the judgment, or to secure or compound for it to the satisfaction of the creditor or the Court, and he does not, within seven days after service of the notice, in case the service is effected in England, and in case the service is effected elsewhere, then within the time limited in that behalf by the order giving leave to effect the service, either comply with the requirements of the notice or satisfy the Court that he has a counter-claim, set-off, or cross demand which equals or exceeds the amount of the judgment debt, and which he could not set up in the action in which the judgment was obtained.

(*h*) If the debtor gives notice to any of his creditors that he has suspended, or that he is about to suspend, payment of his debts.

Note.—This notice may be given verbally, but it must be formal, deliberate, and unqualified.

(*i*) If the Court makes a receiving order in response to and in lieu of an application to commit a judgment debtor, such is *deemed* to be an act of bankruptcy on the part of the debtor (1883 Act, sec. 4; 1890 Act, sec. 1; 1883 Act, sec. 103).

THE PETITION.—A petition may be presented to the Court either by a creditor or by the debtor himself, that a receiving order be made against the debtor for the protection of his estate.

Any creditor, whose debt is sufficient to entitle him to present a bankruptcy petition against all the partners of a firm, may present a petition against any one or more partners of the firm without including the others.

A creditor may present a petition when—

(1) The debt owing, or, if two or more creditors join in the petition, the aggregate of the debts owing, amounts to £50 or upwards.

Note.—If the petitioning creditor is a secured creditor he must, in his petition, either state that he is willing to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or he must give an estimate of the value of his security. In the latter case he may be admitted as a petitioning creditor to the extent of the *balance* of debt due to him (after deducting the value so estimated) in the same manner as if he were an unsecured creditor.

(2) The debt is a liquidated sum, payable either immediately or at some certain future time.

(3) The petition is founded upon an act of bankruptcy which has occurred within three months next before the presentation of the petition; and

(4) The debtor is domiciled in England, or within a year before the date of the presentation of the petition has ordinarily resided or had a dwelling-house or place of business in England.

Although not stated in the Acts, it is necessary as a result of a common law rule in bankruptcy that the petitioning creditor's debt should have accrued due before the commission of the act of bankruptcy upon which it is intended to found the petition. And if the debt is on a bill of exchange the bill must have been *issued* before the act of bankruptcy, although it may not have vested in the petitioning creditor until after such act.

The petition must be verified by affidavit of either the creditor or some one acting for him having knowledge of the facts.

A copy of the petition must be served on the debtor, and the petition will not be heard by the Court until the expiration of eight days from such service, unless it is shown to the satisfaction of the Court that the debtor has absconded, or unless the debtor has filed a declaration of his

inability to pay his debts, in which cases the Court may hear the petition earlier.

Where two or more bankruptcy petitions are presented against the same debtor, or against joint debtors, the Court may consolidate the proceedings, or any of them, on such terms as the Court thinks fit.

At the hearing of the petition the Court requires proof of (1) the creditor's debt, (2) service of the petition, and (3) the act of bankruptcy alleged; and if satisfied with such proof, the Court may make a receiving order, or if the Court is not satisfied therewith or considers no order should be made, the petition may be dismissed.

Although formerly there was statutory remedy for persons aggrieved by the improper filing of a bankruptcy petition, under the present Acts there is apparently no remedy. But an action might be brought under the common law for maliciously presenting a petition and thus abusing legal process, the plaintiff being required to show malice and a want of "reasonable and probable" cause for presenting the petition.

A debtor may petition for a receiving order against himself, filing a declaration of his inability to pay his debts beforehand, or merely stating that fact in the petition itself. Where a petition is filed by a debtor the Court will make a receiving order forthwith.

A creditor's or a debtor's petition may not, after presentation, be withdrawn without leave of the Court.

The Court *may* stay any action, execution, or legal process against the property or person of the debtor at any time after the presentation of a petition; and *any* court in which proceedings are pending against the debtor, on proof of a bankruptcy petition having been presented, may either stay the proceedings or allow them to continue as it may think just.

If a debtor by or against whom a bankruptcy petition has been presented dies, the proceedings in the matter shall, unless the Court otherwise orders, be continued as if he were alive. Where the debtor dies before service of the petition, the Court may order service on the personal representatives.

Where the petitioner does not proceed with due diligence on his petition, the Court may substitute as petitioner any other creditor to whom the debtor may be indebted in the amount required by the Act in the case of the petitioning creditor (1883 Act, secs. 6, 7, 8, 10, 106, 107, 108, 110).

A stamp duty of £5 as a court fee is payable on the petition, and a further sum of £5 on account of expenses must be deposited with the Official Receiver. Both these sums are repayable to the petitioner out of the estate. In special cases the latter £5 need not be deposited.

RECEIVING ORDER.—This is an order made by the Court, either on the petition of a debtor or one or more of his creditors, whereby the Official Receiver is constituted receiver of the property of the debtor. After the making of such an order no person to whom the debtor may be indebted in respect of any debt *provable in the bankruptcy* shall have any remedy against the property or person of the debtor in respect of the debt, or commence any legal proceedings without leave of the Court (1883 Act, sec. 9).

A receiving order does not divest the debtor of his property, but merely protects it until either a scheme or composition has been arranged and sanctioned, or until the debtor be adjudged bankrupt.

A receiving order made against a firm operates as if it were a receiving order made against each of the persons who at the date of the order is a partner in that firm (Rule 262).

The making of a receiving order does not affect the power of any secured

creditor to realise or otherwise deal with his security in the same manner as he would have been entitled to realise or deal with it had the receiving order not been made (1883 Act, sec. 9).

Although it does not follow that on the making of a receiving order the debtor will be adjudged bankrupt, he nevertheless must undergo his public examination, unless exempted on special grounds enumerated below.

The Court has a discretionary power to rescind a receiving order, but it may decline to do so even where all the creditors support the application if the Official Receiver is dissatisfied with the debtor's conduct, and expresses a desire that the debtor be further examined.

STATEMENT OF AFFAIRS.—Where a receiving order is made against a debtor he shall make out and submit to the Official Receiver a statement of, and in relation to, his affairs in the prescribed form, verified by affidavit, and showing the particulars of the debtor's assets, debts, and liabilities, the names, residences, and occupations of his creditors, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed, or as the Official Receiver may require.

The statement shall be so submitted within the following times, namely:—

(*a*) If the order is made on the petition of the debtor, within three days from the date of the order.

(*b*) If the order is made on the petition of a creditor, within seven days from the date of the order.

But the Court may, in either case, for special reasons, extend the time.

Note.—Where any debtor requires an extension of the time for the filing by him of his statement of affairs, he shall apply to the Official Receiver, who may, if he thinks fit, give a written certificate extending such time, which certificate shall be filed and shall render an application to the Court unnecessary (Rule 218).

If the debtor fails, without reasonable excuse, to comply with the requirements of this section, the Court may, on the application of the Official Receiver or of any creditor, adjudge him bankrupt (1883 Act, sec. 16).

When the debtor cannot himself prepare a proper statement of affairs the Official Receiver may, subject to any prescribed conditions and at the expense of the estate, employ some person or persons to assist in the preparation of the statement of affairs (1883 Act, sec. 70). But it must be noted that it is none the less the *debtor's* statement and not that of his accountant, and, as stated more fully below, the debtor is called upon to verify the statement by oath or declaration.

The rate of remuneration is, as a rule, fixed beforehand by the Official Receiver, and subject to "Board of Trade" instructions, the remuneration is left as a matter of bargain between the Official Receiver and the person employed.

A person employed by the debtor without the sanction of the Official Receiver has no claim to any remuneration out of the estate.

Every debtor shall be furnished by the Official Receiver with instructions for the preparation of his statement of affairs. The statement of affairs must be in the prescribed form (brief particulars of which are set out below), with such variations or additions as circumstances may require, or in such other form as the Board of Trade may from time to time direct. The statement must be prepared in duplicate, and one copy must be verified, and filed in court by the Official Receiver (Rule 217).

In cases of partnership the debtors shall submit a statement of their partnership affairs, and each debtor shall submit a statement of his separate affairs (Rule 263).

Any person stating himself in writing to be a creditor of the bankrupt may, personally or by agent, inspect the statement at all reasonable times, and take any copy thereof or extract therefrom; but any person untruthfully so stating himself to be a creditor shall be guilty of a contempt of court, and shall be punished accordingly on the application of the trustee or Official Receiver (1883 Act, sec. 16).

When issuing the notice calling the first meeting of creditors (*infra*) the Official Receiver should, if possible, send to each creditor mentioned in the debtor's statement of affairs a summary of such statement, together with the causes of his failure, and any observations thereon which the Official Receiver may think fit to make (1883 Act, Schedule I. Rule 3).

The debtor is also required to give written answers to a number of questions (printed), and to certify such answers to be correct to the best of his knowledge and belief.

The particulars required in the prescribed form of statement of affairs may be summarised as under:—

List A. Unsecured Creditors.—The name, address, and occupation of each creditor, the amount of the debt, the date contracted, and the consideration therefor. The names must be arranged in alphabetical order and numbered consecutively, creditors for £10 and upwards being placed first. Where there is a contra account against any creditor less than the amount of the claim against the estate, the amount of the creditor's claim and the amount of the contra account should be separately shown, and the balance (only) treated as the amount of debt. No such set-off should be included in List I. Particulars of any bills of exchange or promissory notes held by any creditor should be inserted immediately below the name and address of such creditor.

Note.—The inclusion of a debt by a debtor in his statement of affairs does not amount to an acknowledgment sufficient to take it out of the Statute of Limitations (*Everett* v. *Robinson*, 1858, 28 L.J.Q.B. 23).

List B. Creditors Fully Secured.—The same particulars as in the case of unsecured creditors, and, in addition, particulars of the security held, the date the security was given, the estimated value of the security, and the estimated surplus therefrom (if any).

List C. Creditors Partly Secured.—The same particulars as in the case of creditors fully secured, but showing, instead of estimated surplus, the "estimated balance of debt unsecured."

List D. Liabilities of the Debtor on Bills Discounted other than his own Acceptances for Value.—The name, address, and occupation of each acceptor, the nature of the liability of the "debtor" (*i.e.* whether as drawer or indorser), the dates the bills became or will become due, the amount of the bills (distinguishing between accommodation and other bills), and the amount expected to rank for dividend.

List E. Contingent or other Liabilities.—Full particulars of all liabilities not otherwise scheduled, stating the name, address, and occupation of each creditor or claimant, the amount and nature of the liability or claim, and the date same was incurred.

List F. Creditors for Rent, etc., recoverable by Distress.—The name, address, and occupation of each creditor, the nature and amount of each claim, the period during which the claim accrued due, the due date, the amount recoverable by distress, and the balance (if any) ranking for dividend.

List G. Preferential Creditors for Rates, Taxes, and Wages.—The name, address, and occupation of each creditor, the nature and amount of each claim, the period during which the claim accrued due, the due date, the amount payable in full, and the balance (if any) ranking for dividend.

Note.—The amounts recoverable by distress or payable in full, per Lists F and G, are deductible from the total assets shown on the "Front Sheet" (*see below*), whilst the balances (if any) ranking for dividend must be carried to List A (above).

List H. Property.—Full particulars of every description of property in possession and in reversion, and not included in any other list, showing the amount which each class of property is estimated to produce, and distinguishing between (*a*) cash at bankers, (*b*) cash in hand, (*c*) cash deposited with solicitor for costs of petition, (*d*) stock-in-trade, giving the cost of same in addition to the amount which it is estimated it will produce, (*e*) machinery, (*f*) trade fixtures, fittings, and utensils, (*g*) farming stock, (*h*) growing crops and tenant rights, (*i*) household furniture and effects, (*j*) life policies, and (*k*) any other property.

List I. Debts due to the Estate.—The name, address, and occupation of each debtor; the amount of each of the debts, distinguishing between those which are good, doubtful, and bad; the folio of the ledger or other book (if any) where particulars of each debt are respectively to be found, the date each debt was contracted; particulars of the securities (if any) held for the debt; and the amount each debt is estimated to produce (the good debts, of course, being taken at their face value).

If any debtor to the estate is also a creditor, but for a less amount than his indebtedness, the gross amount due to the estate and the amount of the contra account should be separately shown, and the balance (only) treated as the amount of debt. No such claim should be included in List A.

List J. Bills of Exchange, Promissory Notes, etc., available as Assets.—The name, address, and occupation of the acceptor of each bill or (maker of) note, the amount of each bill or note, the due date, the amount which it is estimated to produce, and particulars of any property held as security for the payment thereof.

Statement K. Deficiency Account.—This account is intended to show how the deficiency or estimated surplus (if any) as at the date of the receiving order is arrived at. The account must commence with the excess of assets over liabilities, or *vice versa* (as the case may be), at some past date. This date should be twelve months before the date of the receiving order, or such other time as the Official Receiver may have fixed. The account must then show the subsequent profits or losses from business or otherwise, all subsequent expenses other than trade expenses, *e.g.* household expenses, loss from bad debts per List I, and any extraordinary losses (of which full particulars must be given), the balance of the account showing the deficiency (or surplus, if so) as at the date of the receiving order, and agreeing with the balance shown upon the "Front Sheet" (*see below*).

The debtor shall, on the request of the Official Receiver, furnish him with trading and profit and loss accounts, and a cash and goods account for such period not exceeding two years prior to the date of the receiving order, as the Official Receiver shall specify. Provided that the debtor shall, if ordered by the Court so to do, furnish such accounts as the Court may order for any longer periods. If the debtor fails to comply with the requirements of this rule, the Official Receiver shall report such failure to the Court, and the Court shall take such action on such report as the Court shall think fit (Rule 338).

List L.—Every list containing particulars which form part of a debtor's statement of affairs must be dated and signed by the debtor, and such lists from A to J inclusive as are not applicable and do not contain any particulars whatsoever are detached from the other lists and enumerated in List L, which is dated and signed by the debtor, so that every list, whether applicable to the circumstances or not, is satisfactorily accounted for.

Front Sheet.—This constitutes the summary of the debtor's position. The assets are obtained from Lists H, I, and J, and the surplus (if any) from fully-secured creditors per List B. From the total of these must be deducted (1) the distrainable and preferential claims per Lists F and G, and (2) any sheriff's charges which may be payable under section 11 of the 1890 Act. The liabilities which are expected to rank against the estate are made up from Lists A, C, D, and E, and the resultant balance, surplus or deficiency, should agree with the balance shown in Statement K. A column is also provided for the amount of the gross liabilities as distinct from those expected to rank against the estate. The front sheet must bear a 2s. bankruptcy stamp as a filing fee, and, as already stated, the statement must be prepared in duplicate, and one copy verified by oath or declaration, the debtor stating that to the best of his knowledge or belief the statement and the several lists annexed thereto are a full, true, and complete statement of his affairs at the date of the receiving order.

The Debtors Act 1869 (section 11) provides that any person adjudged bankrupt shall be guilty of a misdemeanour, and on conviction thereof shall be liable to be imprisoned for any time not exceeding two years, if he makes any material omission in any statement relating to his affairs, unless the jury is satisfied that he had no intention to defraud.

First Meeting of Creditors.—So soon as may be after the making of a receiving order against a debtor a general meeting of his creditors (referred to as the first meeting of creditors), shall be held for the purpose of considering whether a proposal for a composition or scheme of arrangement (if made) shall be entertained, or whether it is expedient that the debtor shall be adjudged bankrupt, and considering generally as to the mode of dealing with the debtor's property (1883 Act, sec. 15 (1)).

The first meeting of creditors shall be summoned for a day not later than fourteen days after the date of the receiving order, unless the Court for any special reason deems it expedient that the meeting be summoned for a later day.

The Official Receiver shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the *London Gazette* and in a local paper, and, as already stated, he shall so soon as practicable send to each creditor mentioned in the debtor's statement of affairs a notice of the time and place of the first meeting of creditors, accompanied if possible by a summary of the debtor's statement of affairs, including the causes of his failure, and any observations thereon which the Official Receiver may think fit to make; but the proceedings at the first meeting shall not be invalidated by reason of any such notice or summary not having been sent or received before the meeting.

The meeting shall be held at such place as is in the opinion of the Official Receiver most convenient for the majority of the creditors.

The Official Receiver, or some person nominated by him, shall be the chairman at the first meeting (Schedule I. sec. 7).

A person shall not be entitled to vote as a creditor at the first or any other meeting of creditors unless he has duly proved a debt (provable in bankruptcy) to be due to him from the debtor, and the proof has been

duly lodged before the time appointed for the meeting (Schedule I. sec. 8).

A creditor shall not vote at any such meeting in respect of any unliquidated or contingent debt, or any debt the value of which is not ascertained (Schedule I. sec. 9).

If a receiving order is made against one partner of a firm, any creditor to whom that partner is indebted jointly with the other parties of the firm, or any of them, may prove his debt for the purposes of voting at any meeting of creditors, and shall be entitled to vote thereat (Schedule I. sec. 13).

The chairman of a meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained (Schedule I. sec. 14).

A creditor may vote either in person or by proxy (Schedule I. sec. 15).

A proxy shall not be used unless it is deposited with the Official Receiver or trustee before the meeting at which it is to be used (Schedule I. sec. 19).

A creditor may appoint the Official Receiver to act in manner prescribed as his general or special proxy (1883 Act, Schedule I. sec. 21). (See "Proxies," *infra.*)

ADJUDICATION.—Where a receiving order is made against a debtor the Court adjudges him bankrupt—

(1) If the creditors at the first meeting, or any adjournment thereof, by ordinary resolution so resolve (1883 Act, sec. 20).

(2) If the creditors pass no resolution thereon (*ibid.*).

(3) If the creditors do not meet to consider the matter, or a quorum does not attend the meeting called by the Official Receiver, or one adjournment thereof (*ibid.* and Rule 191).

(4) If a composition or scheme is not accepted and approved within fourteen days after the public examination has been concluded, or such extended time as may be allowed by the Court (*ibid.*).

(5) Where the Official Receiver satisfies the Court that the debtor has absconded (Rule 191).

(6) Where the public examination of the debtor is adjourned *sine die* (Rule 192, A).

(7) Where the debtor does not intend to propose any scheme or composition (Rule 191).

(8) Where an estate is being wound up in a summary manner and the Court is satisfied, as a result of the public examination, that a scheme or composition ought not to be sanctioned, by reason of the conduct of the debtor (Rule 273).

(9) Where the debtor applies to the Court to be adjudged bankrupt. Such application may be made orally and without notice (Rule 190).

(10) Where the debtor fails to submit his statement of affairs to the Official Receiver without reasonable excuse (1883 Act, sec. 16).

Upon an order of adjudication being made, the debtor's property becomes divisible among his creditors and vests in a trustee.

An order of adjudication may be made although the debtor has died since the commencement of the bankruptcy proceedings (1883 Act, sec. 108, and *re* Walker, 1886, 3 Mor. 69; 54 L.T. 682).

No order of adjudication will be made against a firm in the firm name, but it will be made against the partners individually (Rule 264).

There are three cases in which the Court may *annul* the adjudication, viz.—

(1) Where a composition or scheme is accepted by the creditors and approved by the Court after adjudication (1883 Act, sec. 23).

(2) Where, in the opinion of the Court, the debtor ought not to have been adjudged bankrupt (1883 Act, sec. 35).

(3) Where it is proved to the satisfaction of the Court that the debts of the bankrupt have been paid in full (*ibid.*); but it does not necessarily follow that the Court will annul an adjudication on the payment of twenty shillings in the pound with interest; all the circumstances will be inquired into.

PUBLIC EXAMINATION.—Where a receiving order is made against a debtor (whether adjudication follow or not), the Court appoints a day for a public sitting for the examination of the debtor. The debtor must attend thereat, and submit to an examination as to his conduct, dealings, and property. The examination is to be held so soon as conveniently may be after the expiration of the time for the submission by the debtor of his statement of affairs.

Any creditor who has tendered a proof of debt (or his representative authorised in writing) may question the debtor concerning his affairs and the causes of his failure. The Official Receiver and the trustee (if appointed) may also take part in the examination, whilst the Court may put such questions to the debtor as it may think expedient. The debtor is examined upon oath, and he must answer all such questions as the Court may put or allow to be put to him, and he cannot refuse to answer any such questions on the ground that his answers may tend to incriminate him. Such notes of examination as the Court thinks proper are to be taken down in writing, and are to be read over either to or by the debtor and signed by him, and may thereafter be used in evidence against him; but the notes cannot be used as evidence in connection with proceedings in the same bankruptcy against parties other than the debtor. Any creditor may inspect the notes of the examination at all reasonable times. The Court may adjourn the examination from time to time; but when the Court is of opinion that the affairs of the debtor have been sufficiently investigated, it will by order declare that his examination is concluded; but such order must not be made until after the day appointed for the first meeting of creditors (1883 Act, sec. 17; 1890 Act, sec. 2; *Reg.* v. *Scott*, 1856, 1 D. and B. 47; *re* Brunner, 1887, 19 Q.B.D. 572, etc.).

Although, as a rule, every debtor against whom a *receiving order* has been made must submit to a public examination, there are exceptions, viz.—

(1) For the purposes of approving a composition or scheme by joint debtors the Court may, if it thinks fit, and on the report of the Official Receiver that it is expedient so to do, dispense with the public examination of one of such joint debtors if he is unavoidably prevented from attending the examination by illness or absence abroad (1883 Act, sec. 105).

(2) Where the debtor is a lunatic or suffers from any such mental or physical affliction or disability as in the opinion of the Court makes him unfit to attend his public examination, the Court may make an order dispensing with such examination, or directing that the debtor be examined on such terms, in such manner, and at such place as to the Court seems expedient (1890 Act, sec. 2).

(3) Where the Court has under *exceptional* circumstances rescinded the receiving order before the debtor has undergone his public examination.

CONTROL OVER DEBTOR.—Every debtor against whom a receiving order is made shall, unless prevented by sickness or other sufficient cause, attend the first meeting of his creditors, and shall submit to such examination and give such information as the meeting may require.

He shall give such inventory of his property, such lists of his creditors and debtors, and of the debts due to and from them respectively, submit to such examination in respect of his property or his creditors, attend such other meetings of his creditors, wait at such times on the Official Receiver, special manager, or trustee, execute such powers of attorney, conveyances, deeds, and instruments, and generally do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the Official Receiver, special manager, or trustee, or may be prescribed by general rules, or be directed by the Court by any special order or orders made in reference to any particular case, or made on the occasion of any special application by the Official Receiver, special manager, trustee, or any creditor or person interested.

He shall, if adjudged bankrupt, aid to the utmost of his power in the realisation of his property and the distribution of the proceeds among his creditors.

If a debtor wilfully fails to perform the duties imposed on him by this section, or to deliver up possession of any part of his property (which is divisible amongst his creditors, and which is for the time being in his possession or under his control), to the Official Receiver or to the trustee, or to any person authorised by the Court to take possession of it, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly (1883 Act, sec. 24).

The debtor cannot, however, be compelled to submit himself to a medical examination so that the trustee may be enabled to effect an assurance on his life (*Board of Trade* v. *Block*, 1888, 13 App. Cas. 570).

Special provisions are made in the Acts for the discovery of the debtor's property, and the examination of persons suspected of knowledge of the same (1883 Act, sec. 27), and power is conferred on the Court to order a redirection of the bankrupt's letters to the Official Receiver or trustee for a limited period (sec. 26).

DISQUALIFICATIONS OF THE BANKRUPT.—A bankrupt is disqualified from certain offices as enumerated in section 32 of the Act of 1883, and section 9 of the Act of 1890. These disqualifications are, however, subject to certain limitations and conditions as set out in the sections referred to.

DISCHARGE.—A bankrupt may, at any time after being adjudged bankrupt, apply to the Court for an order of discharge, and the Court will appoint a day for hearing the application, but such application will not be heard until the public examination of the bankrupt has been concluded. A bankrupt intending to apply for his discharge must produce to the Registrar a certificate from the Official Receiver specifying the number of his creditors of whom the Official Receiver has notice (whether they have proved or not). The Registrar shall not less than twenty-eight days before the day appointed for hearing the application give notice of the time and place of the hearing of the application to the Official Receiver and trustee, and the Official Receiver shall forthwith send notice thereof to the Board of Trade for insertion in the *Gazette*. The Official Receiver must also send to each creditor a notice of the day appointed for the hearing of the debtor's application for discharge not less than fourteen days before the day so appointed. But the certificate of the Official Receiver will not

include nor is it necessary in summary cases to send notices to creditors for less than £2 (Rules 235 and 273).

The application must be heard in the open court.

The Official Receiver must make a report upon the bankrupt's conduct and affairs, and the Court takes the report into consideration upon the hearing of the application, and *may* either (1) grant, or (2) refuse an absolute order of discharge, or (3) suspend the operation of the order for a specified time, or (4) grant an order of discharge subject to conditions as to future earnings or after-acquired property, provided that the Court *shall refuse* the discharge in all cases where the bankrupt has committed any misdemeanour under the Debtors Act 1869 or the Bankruptcy Act 1883, or any other misdemeanour, or any felony in connection with the bankruptcy, unless the Court, for special reasons, shall otherwise determine.

The Court shall also, upon proof of any of the facts hereinafter mentioned, either—

(1) Refuse the discharge, or

(2) Suspend the discharge for a period of not less than two years, or

(3) Suspend the discharge until a dividend of not less than ten shillings in the pound has been paid to the creditors, or

(4) Grant an order of discharge conditionally upon the bankrupt assenting to judgment being entered against him by the Official Receiver or trustee for the unsatisfied portion of the debts provable in the bankruptcy, such amount to be payable out of future earnings or after-acquired property, but execution thereon not to be levied without leave of the Court. Such an order may be modified by the Court if after the expiration of two years the bankrupt satisfies the Court that there is no reasonable probability of his being in a position to comply with the terms of the order.

The facts hereinbefore referred to are—

A. That the bankrupt's assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities, unless he satisfies the Court that the fact that the assets are not of a value equal to ten shillings in the pound on the amount of his unsecured liabilities has arisen from circumstances for which he cannot justly be held responsible.

B. That the bankrupt has omitted to keep such books of account as are usual and proper in the business carried on by him, and such as sufficiently disclose his business transactions and financial position within the three years immediately preceding his bankruptcy.

C. That the bankrupt has continued to trade after knowing himself to be insolvent.

D. That the bankrupt has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it.

E. That the bankrupt has failed to account satisfactorily for any loss of assets or for any deficiency of assets to meet his liabilities.

F. That the bankrupt has brought on, or contributed to, his bankruptcy by rash and hazardous speculations, or by unjustifiable extravagance in living, or by gambling, or by culpable neglect of his business affairs.

G. That the bankrupt has put any of his creditors to unnecessary expense by a frivolous or vexatious defence to any action properly brought against him.

H. That the bankrupt has within three months preceding the date of

the receiving order incurred unjustifiable expense by bringing a frivolous or vexatious action.

I. That the bankrupt has within three months preceding the date of the receiving order, when unable to pay his debts as they became due, given an *undue* preference to any of his creditors.

Note.—An undue preference is wider than a fraudulent preference, for although a preference may not be such as would be avoidable as a fraudulent preference, it may nevertheless be deemed *undue*, and affect the debtor's discharge.

J. That the bankrupt has within three months preceding the date of the receiving order incurred liabilities with a view of making his assets equal to ten shillings in the pound on the amount of his unsecured liabilities.

K. That the bankrupt has on any previous occasion been adjudged bankrupt, or made a composition or arrangement with his creditors.

L. That the bankrupt has been guilty of any fraud or fraudulent breach of trust.

The Court may also refuse or suspend an order of discharge, or grant an order subject to conditions, where the bankrupt has made a fraudulent or unjustifiable marriage settlement.

The powers of the Court of suspending and of attaching conditions to a bankrupt's discharge may now be exercised concurrently.

An order of discharge *does not release* the bankrupt—

(1) From any debt on a recognisance, nor from any debt with which the bankrupt may be chargeable at the suit of the Crown, or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence, unless the Treasury certify their consent in writing to his being discharged therefrom.

(2) From any debt or liability incurred by means of any fraud or *fraudulent* breach of trust to which he was a *party*, nor from any debt or liability whereof he has obtained forbearance by any fraud to which he was *a party*.

(3) From any liability under a judgment against him in an action for seduction, or under an affiliation order, or under a judgment against him as a co-respondent in a matrimonial cause, except to such an extent and under such conditions as the Court expressly orders in respect of such liability.

With the foregoing exceptions, an order of discharge releases the bankrupt from all debts provable in the bankruptcy.

An order of discharge is conclusive evidence of the bankruptcy and of the validity of the proceedings therein, and in any proceedings that may be instituted against the bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order, the bankrupt may plead that the cause of action occurred before his discharge, and may give the Bankruptcy Acts and the special matter in evidence.

Where one member only of a firm has been adjudicated bankrupt, his discharge operates to release him from his joint as well as his separate debts (*ex parte* Hammond, 1873, 16 Eq. 614), and where all the members of a firm have been adjudicated bankrupt, and each has been granted his discharge, they are released from the separate and joint liabilities (*Howard* v. *Poole*, 1734, 2 Str. 995), but an order of discharge does not release any person who at the date of the receiving order was a partner or co-trustee

with the bankrupt, or was jointly bound or had made any joint contract with him, or any person who was surety or in the nature of a surety for him.

A discharged bankrupt shall, notwithstanding his discharge, give such assistance as the trustee may require in the realisation and distribution of such of his property as is vested in the trustee, and if he fails to do so he will be guilty of a contempt of court, and the Court may also, if it thinks fit, revoke his discharge (1890 Act, secs. 8 and 10; 1883 Act, sec. 30).

Where a bankrupt is discharged subject to the condition that judgment shall be entered against him, or subject to any other condition as to his future earnings or after-acquired property, it shall be his duty, until such judgment or condition is satisfied, from time to time to give the Official Receiver such information as he may require with respect to his earnings and after-acquired property and income, and not less than once a year to file in the court a statement showing the particulars of any property or income he may have acquired subsequent to his discharge (Rule 244).

Any statement of after-acquired property or income filed by a bankrupt whose discharge has been granted subject to conditions shall be verified by affidavit, and the Official Receiver or trustee may require the bankrupt to attend before the Court to be examined on oath with reference to the statements contained in such affidavit or as to his earnings, income, after-acquired property, or dealings. Where a bankrupt neglects to file such affidavit or to attend the Court for examination when required so to do, or properly to answer all such questions as the Court may put or allow to be put to him, the Court may, on the application of the Official Receiver or trustee, rescind the order of discharge (Rule 244A). (See "Property divisible amongst Creditors," and "After-acquired Property," *infra*).

A bankrupt is not entitled to have any of the costs of or incidental to his application for his discharge allowed to him out of his estate (Rule 239).

Where a bankrupt, not having obtained his discharge, obtains credit to the extent of £20 or upwards from any person without informing such person that he is an undischarged bankrupt, he is guilty of a misdemeanour, and may be dealt with and punished as if he had been guilty of a misdemeanour under the Debtors Act 1869 (1883 Act, sec. 31). To convict a bankrupt of such an offence it is not necessary to show that there was an *intent to defraud.*

OFFICIAL RECEIVER.—This officer is appointed by the Board of Trade under the Bankruptcy Act 1883, to act as Official Receiver of debtors' estates for the particular district or districts assigned to him. Judicial notice is to be taken of the appointment of Official Receivers, and they are officers of the courts to which they are respectively attached (1883 Act, sec. 66, and Rule 321).

Duties.—The duties of an Official Receiver have relation both to the *conduct* of the debtor and the administration of his estate, and the trustee in bankruptcy must supply the Official Receiver with such information and give him such access to, and facilities for, inspecting the bankrupt's books and documents, and generally afford such aid as may be requisite for enabling the Official Receiver to perform his duties (sec. 68).

It is also the duty of the Official Receiver, if so requested by the trustee, to communicate to the trustee all such information respecting the bankrupt and his estate and affairs as may be necessary or conducive to the due discharge of the duties of the trustee (Rule 318).

As regards the debtor, the more important duties of the Official Receiver are:—

(1) To investigate the conduct of the debtor and to report to the Court,

stating whether there is reason to believe that the debtor has committed any act which constitutes a misdemeanour under the Debtors Act 1869, or any amendment thereof, or under the Bankruptcy Acts, or which would justify the Court in refusing, suspending, or qualifying an order for his discharge. The Official Receiver has also to report upon the debtor's conduct upon an application for discharge or for the approval of a composition or scheme, and to make such other reports concerning the conduct of the debtor as the Board of Trade may direct.

(2) To take such part in the public examination of the debtor as the Board of Trade may direct, and for that purpose, if specially authorised by the Board of Trade, he may employ a solicitor with or without counsel.

(3) To take such part and give such assistance in relation to the prosecution of any fraudulent debtor as the Board of Trade may direct (1883 Act, sec. 69; 1890 Act, sec. 8).

(4) To furnish the debtor, as soon as a receiving order has been made, with a copy of instructions for the preparation of his statement of affairs, together with the necessary forms (Rule 324).

(5) The Official Receiver (or some person deputed by him) must also hold a personal interview with the debtor for the purpose of investigating his affairs. The debtor is required to answer numerous questions (printed) and to sign written replies to same (Rule 324).

As regards the estate of the debtor, the more important duties of the Official Receiver are:—

(1) Pending the appointment of a trustee, to act as interim receiver of the debtor's estate, and where a special manager is not appointed, to act as manager thereof (see "*Powers*," below).

(2) To authorise the special manager to raise money or make advances for the purposes of the estate in any case where, in the interests of the creditors, it appears necessary so to do (see "*Powers*," below).

(3) To summon and preside at the first meeting of creditors, and issue forms of proxy for use at the first and any subsequent meetings of creditors before the appointment of a trustee. In summoning the first meeting of creditors the Official Receiver should send a summary of the debtor's statement of affairs, including the causes of his failure and any observations thereon which the Official Receiver may think fit to make; but the proceedings at the first meeting will not be invalidated by reason of any notice or summary not having been sent or received before the meeting. The Official Receiver may nominate a chairman of the first meeting instead of attending personally.

(4) To report to the creditors as to any proposal which the debtor may have made with respect to the mode of liquidating his affairs.

(5) To advertise the receiving order, the date of the creditor's first meeting, and of the debtor's public examination, and such other matters as it may be necessary to advertise.

(6) To act as trustee during any vacancy in the office of trustee, and after the release of the (creditors') trustee. Subject to the power of the creditors by *special* resolution to appoint their own trustee, the Official Receiver acts as trustee in small bankruptcies. Subject to the power of the creditors by *ordinary* resolution to appoint another trustee, the Official Receiver also acts as trustee of the estate of a deceased insolvent. With these exceptions the Official Receiver cannot act as trustee of a bankrupt's property; but there is nothing to prevent him acting as trustee under a composition or scheme of arrangement, and Rule 209 provides that in

certain cases he is to act *ex officio* as trustee under compositions and schemes.

Where the Official Receiver is trustee, the Board of Trade act as committee of inspection.

(7) To account to the Board of Trade, pay over all moneys and deal with all securities in such manner as the Board may from time to time direct. When a trustee has been appointed by the creditors the Official Receiver must account to him for all receipts and payments made since the date of the receiving order (1883 Act, sec. 70; and Rule 318).

Powers.—(1) All expressions in the Bankruptcy Acts referring to the trustee under a bankruptcy shall, unless the context otherwise requires, or the Acts otherwise provide, include the Official Receiver *when acting as trustee* (1883 Act, sec. 68).

(2) The Official Receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business, or the interest of the creditors generally, require the appointment of a special manager of the estate or business, other than the Official Receiver, appoint a manager thereof accordingly, to act until a trustee is appointed, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the Official Receiver (1883 Act, sec. 12).

Note.—The Official Receiver has an absolute discretion with regard to the appointment of a special manager (*re* Whittaker, 1884, 50 L.T. 510).

Where the Official Receiver has appointed a special manager he *may* at any time remove him if his employment seems unnecessary or unprofitable to the estate, and he *must* remove him if so required by a special resolution of the creditors (Rule 331).

(3) For the purpose of his duties as interim receiver or manager, the Official Receiver has the same powers as if he were a receiver and manager appointed by the High Court, but shall, as far as practicable, consult the wishes of the creditors with respect to the management of the debtor's property, and may for that purpose, if he thinks it advisable, summon meetings of the persons claiming to be creditors, and shall not, unless the Board of Trade otherwise order, incur any expense beyond such as is requisite for the protection of the debtor's property or the *disposing of perishable goods* (1883 Act, sec. 70).

Note.—Where the Official Receiver is in doubt as to whether certain goods should be sold or not, he should apply to the Court for directions, but, prior to adjudication, the Official Receiver has no power to sell any of the property of the debtor other than that which is perishable.

(4) The Official Receiver, *before the appointment of a trustee*, has all the powers of a trustee with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto is subject to a like appeal (1883 Act, 2nd Schedule, Rule 27).

(5) An Official Receiver may, for the purpose of affidavits, verifying proofs, petitions, or other proceedings under the Bankruptcy Acts, administer oaths (1883 Act, sec. 68).

Note.—"Oath" includes affirmation and statutory declaration (sec. 168).

(6) Where there is no committee of inspection appointed in any bankruptcy, any act or thing or any direction or permission authorised by the Bankruptcy Acts, or required to be done or given by the committee, may be done or given by the Board of Trade upon the application of the trustee, and where such functions so devolve upon the Board of Trade they may,

subject to any directions of the Board, be exercised by the Official Receiver (1883 Act, sec. 22; and Rule 337).

Where a debtor is adjudged bankrupt, and a trustee is appointed, the Official Receiver shall forthwith put the trustee into possession of all property of the bankrupt of which the Official Receiver may be possessed; provided that such trustee shall have, before the estate is handed over to him by the Official Receiver, discharged any balance due to the Official Receiver on account of fees, cost, and charges properly incurred by him and payable under the Bankruptcy Acts, and on account of all advances properly made by him in respect of the estate, together with interest on such advances at the rate of £4 per cent per annum, and shall have discharged or undertaken to discharge all guarantees which have been properly given by the Official Receiver for the benefit of the estate; and the trustee shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the trustee before being put into possession of the property of the bankrupt, and whether incurred before or after he has been put into such possession.

The Official Receiver shall be deemed to have a lien upon the estate until such balance shall have been paid, and such guarantees and other liabilities shall have been discharged (Rule 318).

SPECIAL MANAGER.—The Official Receiver of a debtor's estate may, on the application of any creditor or creditors, and if satisfied that the nature of the debtor's estate or business, or the interests of the creditors generally, require the appointment of a special manager of the estate or business, other than the Official Receiver, appoint a manager thereof accordingly, *to act until a trustee is appointed*, and with such powers (including any of the powers of a receiver) as may be entrusted to him by the Official Receiver (1883 Act, sec. 12).

The Official Receiver may authorise the special manager to raise money or make advances for the purposes of the debtor's estate in any case where, in the interests of the creditors, it appears necessary to do so (sec. 70).

Note.—The Official Receiver has an absolute discretion as to whether he will make the appointment, and no appeal lies from his discretion (*re* Whittaker, 1884, 50 L.T. 510). Where no appointment is made, it is the Official Receiver's duty to act as manager of the estate (sec. 70).

The special manager shall give security in such manner as the Board of Trade may direct. Failure to give or keep up the security is a ground for rescision of his appointment or his removal.

The special manager shall receive such remuneration as the creditors may by resolution at an ordinary meeting determine, or in default of any such resolution, such remuneration as may from time to time be fixed by the Board of Trade (1883 Act, sec. 12; and Rule 343).

Every special manager shall account to the Official Receiver, and such special manager's accounts shall be verified by affidavit in the prescribed form, and when approved by the Official Receiver, the totals of the receipts and payments shall be added to the Official Receiver's accounts (Rule 344).

The verified accounts of the special manager (so incorporated) must be forwarded to the Board of Trade, together with the necessary vouchers, at the first audit of the trustee's accounts.

When the Official Receiver appoints a special manager, he *may* at any time remove him if his employment seems unnecessary or unprofitable to the estate, and he *shall* remove him if so required by a special resolution of the creditors (Rule 331).

COMMITTEE OF INSPECTION.—This is a committee consisting of not more

than five nor less than three persons appointed for the purpose of superintending the administration of a bankrupt's property by the trustee.

The members of the committee are selected by the creditors by ordinary resolution, and any creditor, or the holder of a general proxy or general power of attorney from a creditor, may be appointed, provided that the creditor must prove his debt, and his proof must be admitted before he (or his proxy or attorney) acts upon the committee. The committee meet at such times as *they* shall from time to time appoint, and failing such appointment, at least once a month; and the trustee or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

They may act by a majority of their number present, provided a majority of the whole committee are present at the meeting. The continuing members of the committee may act notwithstanding any vacancy in their body, provided there be not less than two such continuing members.

No defect or irregularity in the election of a member of a committee of inspection shall vitiate any act done by him in good faith.

Where the number of members of the committee is for the time being less than five, the creditors may elect additional members, but the total number of members must not exceed five.

Any member of the committee may resign his office by notice in writing, delivered to the trustee; and any member may be removed by an ordinary resolution at any meeting of creditors of which notice has been given stating the object of the meeting (1883 Act, secs. 22 and 143; 1890 Act, sec. 5).

Powers.—The committee may be empowered by the creditors to appoint a trustee and to fix his remuneration, and the trustee may consult the committee upon all important matters in connection with the administration of the estate. In particular, the trustee may only exercise certain powers subject to the express permission of the committee. These special powers are enumerated in detail under the head of "Trustee (*Powers*)," *infra*.

Duties.—The committee must audit the trustee's cash-book at least once every three months, and certify same. If the trustee carries on the business of the bankrupt, the "Trading Account" must be audited by the committee at least once every month (Rules 288 and 308).

Generally, it is the duty of the committee to control the trustee in the administration of the estate; powers are conferred upon the committee, and it is their duty to exercise those powers. The trustee must have regard to any directions of the creditors or the committee, but in case of conflict, the directions of the creditors in general meeting override any directions given by the committee (1883 Act, sec. 89).

A member of the committee is debarred from purchasing any part of the bankrupt's estate without leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent, or servant. Any such purchase may be set aside by the Court upon the application of the Board of Trade or any creditor (Rule 316).

No member of a committee of inspection shall, except with sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the bankruptcy, or to receive out of the estate any payment for services rendered by him in connection with the administration of the estate, or for any goods supplied by him to the trustee for or on account of the estate. If it appears to the Board of Trade that any such profit or payment has been made, they may disallow such payment or recover such profit, as the case may be, on the audit of the trustee's account (Rule 317).

The sanction of the Court to payment being made for services rendered to the estate by a member of a committee of inspection will only be given when the services performed are of a special nature, and the cost of obtaining the sanction of the Court under Rules 316 and 317 above must be borne by the person in whose interest such sanction is obtained (or applied for), and cannot be charged against the estate (Rule 316A).

No payment will be allowed under any circumstances to a member of a committee of inspection for services rendered by him in the discharge of the duties attaching to his office *as a member* of such committee (Rule 317A).

The members of the committee may be paid their actual out-of-pocket expenses *necessarily* incurred, provided the approval of the Board of Trade be obtained (Rule 125).

If there be no committee of inspection appointed by the creditors, any act or thing, or any direction or permission, which by the Bankruptcy Act 1883 is authorised or required to be done or given by the committee, may be done or given by the Board of Trade on the application of the trustee, and any functions which devolve on the Board may (subject to any special directions) be exercised by the Official Receiver (1883 Act, sec. 22; and Rule 337).

TRUSTEE.—*Appointment.*—Where a debtor is adjudged bankrupt, or the creditors have resolved that he be adjudged bankrupt, the creditors may, by ordinary resolution, appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt, or they may resolve to leave his appointment to the committee of inspection.

Note.—An ordinary resolution is a resolution decided by a majority in value of the creditors present, personally or by proxy, at a meeting of creditors and voting on the resolution (1883 Act, sec. 168).

The person appointed trustee shall give security in manner prescribed to the satisfaction of the Board of Trade, and the Board, if satisfied with the security, shall certify that his appointment has been duly made, unless they object to the appointment on the ground that it has not been made in good faith by a majority in value of the creditors voting, or that the person appointed is not fit to act as trustee, or that his connection with or relation to the bankrupt or his estate, or any particular creditor, makes it difficult for him to act with impartiality in the interests of the creditors generally.

Provided that where any such objection is made by the Board they shall, if so requested by a majority in value of the creditors, notify the objection to the High Court, and thereupon the High Court may decide upon its validity (1883 Act, sec. 21).

With regard to solicitation for proxies in order to obtain the appointment of trustee, see title "*Remuneration*" (below).

It shall be sufficient reason for refusing to certify the appointment of a person as trustee that in any other proceeding under the Acts such person has either been removed for misconduct or neglect of duties, or has failed or neglected, without good cause shown by him, to render his accounts for audit for two months after the date by which the same should have been rendered, or has failed for a longer period than six months to pay into the Bankruptcy Estates Account at the Bank of England any unclaimed dividends or undistributed moneys, or has otherwise failed to comply with any order of the Board of Trade (Rules 300 and 301; 1890 Act, sec. 4).

When the appointment of a trustee is certified, notice of his appointment shall forthwith be gazetted by the Board of Trade, and a certificate of the appointment shall be sent by the Board of Trade to the Registrar. The

appointment of a trustee shall take effect as from the date of the certificate. The trustee shall also forthwith insert notice of his appointment in a local paper. The expense of such gazetting and notice shall be borne by the trustee, and may be charged by him against the estate (Rule 298). Although the *appointment* of a trustee takes effect from the date of the certificate of the Board of Trade (1883 Act, sec. 21), the trustee's *title* relates back (see "Relation Back," *infra*). A certificate of the Board of Trade that a person has been appointed trustee under the 1883 Act is conclusive evidence of his appointment (sec. 138).

If a trustee is not appointed by the creditors within four weeks from the date of the adjudication or in the event of negotiations for a composition or scheme pending at the expiration of those four weeks, then within seven days from the close of these negotiations by the refusal of the creditors to accept, or the Court to approve, the composition or scheme, the Official Receiver shall report the matter to the Board of Trade, and thereupon the Board of Trade shall appoint some fit person to be trustee of the bankrupt's property, and shall certify the appointment.

Provided that the creditors or the committee of inspection (if so authorised by resolution of the creditors) may at any subsequent time, if they think fit, appoint a trustee, and on the appointment being made and certified, the person appointed shall become trustee in the place of the person appointed by the Board of Trade.

When a debtor is adjudged bankrupt after the first meeting of creditors has been held, and a trustee has not been appointed prior to the adjudication, the Official Receiver shall forthwith summon a meeting of creditors for the purpose of appointing a trustee (1883 Act, sec. 21).

The creditors may, if they think fit, appoint more persons than one to the office of trustee; and when more persons than one are appointed, they shall declare whether any act required or authorised to be done by the trustee is to be done by all or any one or more of such persons, but all such persons are in the Act included under the term "trustee," and shall be joint tenants of the property of the bankrupt.

The creditors may also appoint persons to act as trustees in succession in the event of one or more of the persons first-named declining to accept the office of trustee, or failing to give security, or not being approved of by the Board of Trade (1883 Act, sec. 84).

If a vacancy occurs in the office of a trustee, the creditors in general meeting may appoint a person to fill the vacancy, and thereupon the same proceedings shall be taken as in the case of a first appointment.

The Official Receiver shall, on the requisition of any creditors, summon a meeting for the purpose of filling any such vacancy.

If the creditors do not, within three weeks after the occurrence of a vacancy, appoint a person to fill the vacancy, the Official Receiver shall report the matter to the Board of Trade, and the Board may appoint a trustee, but in such case the creditors or committee of inspection shall have the same power of appointing a trustee as in the case of a first appointment (1883 Act, sec. 87).

No defect or irregularity in the appointment of a trustee shall vitiate any act done by him in good faith (1883 Act, sec. 143).

Remuneration.—Where the creditors appoint any person to be trustee of a debtor's estate, his remuneration (if any) shall be fixed by an ordinary resolution of the creditors, or if the creditors so resolve, by the committee of inspection, and shall be in the nature of a commission or percentage, of which one part shall be payable on the amount realised after deducting any

sums paid to secured creditors out of the proceeds of their securities, and the other part on the amount distributed in dividend (1883 Act, sec. 72).

The creditors, or, as the case may be, the committee of inspection, in voting the remuneration of the trustee, shall distinguish between the commission or percentage payable on the amount realised and the commission or percentage payable on the amount distributed in dividend (Rule 305).

In calculating the percentage payable on the amount realised, assets realised by the Official Receiver, sums paid to secured creditors (in respect of their securities), and moneys expended in carrying on the trade or business, must be deducted from the total receipts. The percentage payable on dividend must not be charged until the dividend is in course of payment (Board of Trade Regulations).

The resolution of the creditors shall express what expenses the remuneration is to cover, and no liability shall attach to the bankrupt estate or to the creditors in respect of any expenses which the remuneration is expressed to cover (1883 Act, sec. 72).

The trustee is not entitled to make a profit charge in respect of keeping possession of the debtor's estate, but only to charge the amount actually paid (Board of Trade Regulations).

Where a trustee receives remuneration for his services as such, no payment will be allowed in his accounts in respect of the performance by any other person of the ordinary duties which are required by statutes or rules to be performed by himself. When the trustee is a solicitor he may contract that the remuneration of his services as trustee shall include all professional services (1883 Act, sec. 73).

Where either the trustee or his firm acts as auctioneer or valuer, no special charge for such services will be allowed (Board of Trade Regulations).

The trustee's remuneration is not a taxable charge (1883 Act, sec. 73).

The cost of the premium upon the trustee's guarantee bond will not be allowed against the estate unless such charge has been specially approved by the creditors or by the committee of inspection in those cases in which the committee have power to fix the trustee's remuneration (Board of Trade Regulations).

If one-fourth in number or value of creditors dissent from the resolution of the creditors, or the bankrupt satisfies the Board of Trade that the remuneration is unnecessarily large, the Board of Trade shall fix the amount of remuneration (1883 Act, sec. 72).

Where a trustee acts without remuneration he shall be allowed out of the bankrupt's estate such proper expenses incurred by him in or about the proceedings of the bankruptcy as the creditors may, with the sanction of the Board of Trade, approve (1890 Act, sec. 15).

In any case where the Board of Trade appoint a trustee (see "*Appointment*," *supra*), he shall be paid out of the estate of the bankrupt such remuneration as the Board of Trade shall determine (Rule 307).

A trustee shall not, under any circumstances whatever, make any arrangement for or accept from the bankrupt, or any solicitor, auctioneer, or any other person that may be employed about a bankruptcy, any gift, remuneration, or pecuniary or other consideration or benefit whatever, beyond the remuneration fixed by the creditors and payable out of the estate, nor shall he make any arrangement for giving up, or give up, any part of his remuneration, either as receiver, manager, or trustee to the bankrupt, or any solicitor or other person that may be employed about a bankruptcy (1883 Act, sec. 72)

Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a trustee in obtaining proxies, or in procuring the trusteeship, except by the direction of a meeting of creditors, the Court shall have power, if it thinks fit, to order that no remuneration shall be allowed to the person by whom, or on whose behalf, such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors to the contrary (1883 Act, 1st Schedule, Rule 20).

The vote of the trustee, or of his partner, clerk, solicitor, or solicitor's clerk, either as creditor or as proxy for a creditor, shall not be reckoned in the majority required for passing any resolution affecting the remuneration or conduct of the trustee (1883 Act, sec. 88).

Where the trustee's remuneration has been fixed by resolution, and the trustee has performed his duties in whole or part in pursuance of that resolution, it amounts to a contract which neither the creditors nor the committee of inspection have any power to alter. If under such circumstances it is desired to rectify the basis of the remuneration, application must be made to the Court (Marsden, *ex parte* Board of Trade, 1892, 9 Mor. 70).

Control by the Board of Trade.—The Board shall take cognisance of the conduct of trustees, and in the event of any trustee not faithfully performing his duties and duly observing all the requirements imposed on him by the statute rules or otherwise with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor in regard thereto, the Board shall inquire into the matter, and take such action thereon as may be deemed expedient.

The Board may at any time require any trustee to answer any inquiry made by them in relation to any bankruptcy in which the trustee is engaged, and may, if the Board think fit, apply to the Court to examine on oath the trustee or any other person concerning the bankruptcy. The Board may also direct a local investigation to be made of the books and vouchers of the trustee (1883 Act, sec. 91). (See also "*Directions of Court, etc.,*" below.)

Directions of the Court, Committee, etc.—Subject to the provisions of the Bankruptcy Acts (see "*Powers,*" below), the trustee shall, in the administration of the property of the bankrupt and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors or by the committee of inspection, and any directions so given by the creditors at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

The trustee may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the bankruptcy (1883 Act, sec. 89), and a fee of 5s. is payable upon every such application. Neither the trustee nor any member of the committee of inspection of an estate shall, while acting as trustee or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the estate. Any such purchase made contrary to the provisions of the rule may be set aside by the Court on the application of the Board of Trade or any creditor (Rule 316). The trustee may also be removed from his office (*ex parte* Reynolds, 2 M. and A. 492).

Where the trustee carries on the business of the debtor he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from his employer (if any), or from any person whose

connection with the trustee is of such a nature as would result in the trustee obtaining any portion of the profit (if any) arising out of the transaction (Rule 316A).

In any case in which the sanction of the Court is obtained under the above rules, or under Rule 317, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the debtor's estate (Rule 316A).

If it appears to the Board of Trade that any profit or payment has been made by or to any member of the committee of inspection, contrary to the provisions of Rule 317, they may disallow such payment or recover such profit, as the case may be, on the audit of the trustee's account.

Subject to the foregoing and the provisions of the Bankruptcy Acts (see "*Powers*," below), the trustee shall use his own discretion in the management of the estate and its distribution among the creditors (1883 Act, sec. 89). But the Court, on the application of the bankrupt or any creditor aggrieved thereby, may confirm, reverse, or modify the act or decision complained of, and make such order on the premises as it thinks just (1883 Act, sec. 90).

Powers.—Subject to the provisions of the Bankruptcy Acts, the trustee may upon his own responsibility do all or any of the following things:—

(1) Sell all or any of the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels.

Note.—The trustee is accountable for the proceeds of every auction sale authorised by him (Rule 295), and the gross proceeds are to be recovered from the auctioneers and included under the head of receipts in the cash-book, credit being taken for the auctioneers' disbursements and charges as payments when such charges, etc., have been duly taxed. The auctioneers' sale accounts must in all cases be forwarded with the accounts for audit. In the case of any sale by private contract, the account should show the name, address, and occupation of the purchaser, and the mode in which the amount of the purchase-money has been arrived at (Board of Trade Regulations).

The bankrupt's property may be sold to the bankrupt himself (*Kitson* v. *Hardwick*, 1872, L.R. 7 C.P. 473).

A purchaser of the goodwill of a bankrupt's business from his trustee cannot restrain the bankrupt from *bona fide* recommencing business and soliciting his former customers (*Walker* v. *Mottram*, 1881, 19 C.D. 355); but if the bankrupt joins in the sale and agrees not to carry on a similar business within a given area, he will be bound thereby (*Buxton Publishing Co.* v. *Mitchell*, C. and E. 527). (But note the effect of *Trego* v. *Hunt*, 1896, App. Ca. 7.)

(2) Give receipts for any money received by him, which receipts shall effectually discharge the person paying the money from all responsibility in respect of the application thereof.

(3) Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt.

(4) Exercise any powers the capacity to exercise which is vested in the trustee under the Bankruptcy Acts, and execute any powers of attorney, deeds, and other instruments for the purpose of carrying into effect the provisions of the Bankruptcy Acts.

(5) Deal with any property to which the bankrupt is beneficially

entitled as tenant in tail in the same manner as the bankrupt might have dealt with it (1883 Act, sec. 56).

The trustee may, *with the permission of the committee of inspection*, do all or any of the following things:—

(1) Carry on the business of the bankrupt, so far as may be necessary for the beneficial winding-up of the same.

Note.—The business ought not to be carried on with the object of paying dividends out of profits or of increasing the value of the goodwill. Such a practice necessarily involves risk of loss to which the creditors ought not to be exposed, and has, moreover, been held to be contrary to law (Board of Trade Regulations).

(2) Bring, institute, or defend any action or other legal proceeding relating to the property of the bankrupt.

Note.—Where a trusteee refuses to carry on an action which is considered beneficial to the estate, the creditors may apply for his removal (*ex parte* Phillips, 2 M. and A. 530). When a trustee brings an action on behalf of the estate, although no personal benefit can accrue to him as a result of the litigation, he will be personally liable for the costs; so that if the estate of the bankrupt is insufficient for the payment of any of such costs, the trustee would have to pay them (or the balance of them) personally. The proper course, therefore (and the usual course), for the trustee is to obtain an indemnity against the costs from the committee of inspection or the creditors personally, before commencing litigation (*ex parte* Angerstein, 1874, 9 Ch. 479).

Where an action is brought against a trustee (or the Official Receiver) as representing the estate of the debtor, or where a trustee (or the Official Receiver) is made a party to a cause or matter on the application of any other party thereto, he shall not be personally liable for costs unless the Court otherwise directs (Rule 108).

The trustee may sue and be sued by the official name of "the trustee of the property of ——, a bankrupt," inserting the name of the bankrupt, and by that name may, in any part of the British dominions or elsewhere, hold property of every description, make contracts, sue and be sued, enter into any engagements binding on himself and his successors in office, and do all other acts necessary or expedient to be done in the execution of his office (1883 Act, sec. 83).

(3) Employ a solicitor or other agent to take any proceedings or do any business which may be sanctioned by the committee of inspection.

Note.—The sanction for the employment must be obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction (1890 Act, sec. 15).

(4) Accept as the consideration for the sale of any property of the bankrupt a sum of money payable at a future time, subject to such stipulations as to security and otherwise as the committee think fit.

(5) Mortgage or pledge any part of the property of the bankrupt for the purpose of raising money for the payment of his debts.

(6) Refer any dispute to arbitration, compromise all debts, claims, and liabilities, whether present or future, certain or contingent, liquidated or unliquidated, subsisting or supposed to subsist between the bankrupt and any person who may have incurred any liability to the bankrupt, on the receipt of such sums, payable at such times, and generally on such terms, as may be agreed upon.

(7) Make such compromise or other arrangement as may be thought

expedient with respect to any claim arising out of or incidental to the property of the bankrupt, made or capable of being made on the trustee by any person or by the trustee on any person.

(8) Divide in its existing form amongst the creditors, according to its estimated value, any property which from its peculiar nature or other special circumstances cannot be readily or advantageously sold.

The permission given for the purposes of this section shall not be a general permission to do all or any of the above-mentioned things, but shall only be a permission to do the particular thing or things for which permission is sought in the specified case or cases (1883 Act, sec. 57).

The trustee, with the permission of the committee of inspection, may appoint the bankrupt himself to superintend the management of the property of the bankrupt, or any part thereof, or to carry on the trade (if any) of the bankrupt, for the benefit of his creditors, and in any other respect to aid in administering the property in such manner and on such terms as the trustee may direct.

The trustee may from time to time, with the permission of the committee of inspection, make such allowance as he may think just to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate, but any such allowance may be reduced by the Court (1883 Act, sec. 64).

A trustee's powers as to disclaimer are separately dealt with under that title.

Duties of a Trustee—(*a*) *As regards Moneys.*—An account called the Bankruptcy Estates Account shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under the Bankruptcy Acts shall be paid to that account.

Every trustee in bankruptcy shall in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay without any deduction the money received by him, and remit all current bills of exchange to the Bankruptcy Estates Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

Provided that if it appears to the committee of inspection that for the purpose of carrying on the debtor's business, or of obtaining advances, or because of the probable amount of the cash balance, or if the committee shall satisfy the Board of Trade that for any other reason it is for the advantage of the creditors that the trustee should have an account with a local bank, the Board of Trade shall, on the application of the committee of inspection, authorise the trustee to make his payments into and out of such bank as the committee may select.

Such account shall be opened and kept by the trustee in the name of the debtor's estate, and any interest receivable in respect of the account shall be part of the assets of the estate (1883 Act, sec. 74).

Upon any application by a committee of inspection to the Board of Trade for a local banking account a fee of £1 is payable, and upon every order of the Board of Trade for such local bank account a fee of £2 is payable.

All necessary disbursements made by a trustee on account of an estate to the date of his application for release will be paid to him out of any money standing to the credit of the estate in the Bankruptcy Estates Account, on application to the Inspector-General in Bankruptcy.

Any expense properly incurred by the trustee, after applying for but

before obtaining his release, will be repaid to him by the Official Receiver out of any funds available for the purpose.

Cheques to the order of the payee for sums which become payable on account of the estate may be obtained by the trustee on application by him on the prescribed form for delivery by him to the parties entitled, but in the case of small dividends payment will be made by money orders. Under no circumstances will the Board of Trade hold themselves responsible for payments made on the requisition of the trustee.

The Inspector-General will be prepared to certify as to the balance standing to the credit of an estate in the Bankruptcy Estates Account, on receiving from the trustee a statement of the balance shown by the bank columns of the estate cash-book (Board of Trade Regulations).

If a trustee at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case may authorise him to retain, then unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall have no claim for remuneration, and may be removed from his office by the Board of Trade, and shall be liable to pay any expenses occasioned by reason of his default (1883 Act, sec. 74).

No trustee in a bankruptcy or under any composition or scheme of arrangement shall pay any sums received by him as trustee into his private banking account (1883 Act, sec. 75).

(*b*) *As regards Accounts and Audit.*—The Official Receiver until a trustee is appointed, and thereafter the trustee, shall keep a book to be called the "Record Book," in which he shall record all minutes, all proceedings had, and resolutions passed at any meetings of creditors or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the estate; but he shall not be bound to insert in the record any document of a confidential nature (such as the opinion of counsel on any matter affecting the interests of the creditors), nor need he exhibit such a document to any person other than a member of the committee of inspection (Rule 285).

The Official Receiver until a trustee is appointed, and thereafter the trustee, shall keep a book to be called the "Cash Book" (which shall be in such form as the Board of Trade may from time to time direct), in which he shall (subject to the provisions of the rules as to trading accounts) enter from day to day the receipts and payments made by him (Rule 286).

Where the trustee carries on the business of the debtor, he shall keep a distinct account of the trading, and shall incorporate in the cash-book the total weekly amounts of the receipts and payments on such trading account.

The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the trustee shall thereupon submit such account to the committee of inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same (Rule 308).

As already stated under the heading "*Directions, etc.*" (*supra*), the trustee, when he carries on the business of the debtor, must not, without the express sanction of the Court (previously obtained, and at the cost of the person in whose interest such sanction is sought), purchase any goods for the carrying on of such business from his employer (if any), or from any person whose connection with the trustee is of such a nature as would result in

the trustee obtaining any portion of the profit (if any) arising out of the transaction. Nor can a member of the committee rightly make a profit from any transaction arising out of the bankruptcy, or realise any payment for goods supplied without previous sanction of the Court (Rules 316 and 317).

The trustee shall submit the record-book and cash-book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months (Rule 287).

The committee of inspection shall, not less than once every three months, audit the cash-book, and certify therein under their hands the day on which the said book was audited. The certificate shall be in the prescribed form, with such variations as circumstances may require (Rule 288).

Every trustee shall, at the expiration of six months from the date of the receiving order, and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the cash-book for such period (in duplicate), together with the necessary vouchers and copies of the certificates of audit by the committee of inspection. When the trustee is appointed the Official Receiver accounts to him, and the receipts and payments of the Official Receiver are incorporated in the trustee's accounts and audited at the first audit of the trustee's account. The trustee must also forward with the first accounts a summary of the debtor's statement of affairs in such form as the Board of Trade may direct, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised.

When the estate has been fully realised and distributed, or if the adjudication is annulled, the trustee shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

The accounts sent in by the trustee shall be certified and verified by him in the prescribed form (Rule 289).

The affidavits verifying the trustee's accounts (or the affidavits of "no receipts or payments," mentioned below, as the case may be) should be so filled in as regards dates as to cover the entire period from the date of the trustee's appointment to the date of his application for his release. The terms of these affidavits require that a trustee shall account for moneys received by his solicitor or any other person on his behalf, and for which the trustee will be held personally responsible. Upon being sworn to an affidavit verifying his accounts, the trustee should see that the account is duly marked by the commissioner or other person administering the oath.

Where there is no committee of inspection the trustee should forward the accounts for audit as soon as they are due, but where there is a committee the trustee should summon a meeting immediately the accounts become due, so that they may be audited before being forwarded to the Board of Trade; but the accounts must not be delayed in consequence of any neglect on the part of the members of the committee to attend such meeting, for in such event a memorandum should be inserted in the cash-book to the effect that the meeting was duly summoned, but a quorum was not present. The accounts should then be forwarded to the Board of Trade.

Upon one copy of the cash-book showing the assets realised forwarded by the trustee to the Board of Trade a fee stamp is payable, according to the following scale, on the assets realised and brought to credit, viz. £1 on every £100 or fraction of £100 up to £5000, and 10s. on every £100 or fraction of £100 beyond £5000. Provided that where a fee has been taken

on an application to approve a composition, or scheme of arrangement, seven-eighths of the amount of such fee may be deducted from the fee payable upon the cash-book. In calculating the duty payable upon the copy of the cash-book the trustee should deduct from the gross realisations any payments made to secured creditors and any sums expended in carrying on the trade or business (Board of Trade Regulations and Scale of Fees).

The accounts required at audit (which should be forwarded to the "Inspector-General in Bankruptcy") are a copy of the estate cash-book to be retained by the Board of Trade (verified by affidavit with a two-shilling stamp affixed thereto), and a copy for filing in the court, each bearing copies of the certificates of audit by the committee of inspection, together with the vouchers for all payments, the auctioneer's sale accounts (if any) and allocaturs for taxable charges. The record-book should also be forwarded for inspection, together with any original resolutions of the creditors or committee not entered in the record (Board of Trade Regulations).

When the trustee's account has been audited the Board of Trade shall certify that the account has been duly passed, and thereupon the duplicate copy bearing a like certificate shall be transmitted to the Registrar, who shall file the same with the proceedings in the bankruptcy (Rule 290).

Where a trustee has not, since the date of his appointment, or since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the debtor's estate, he shall, at the period when he is required to transmit his estate account to the Board of Trade, forward to the Board an affidavit of "no receipts or payments" (Rule 291), and the trustee must himself provide the stamp therefor (*re* Rowlands *ex parte* Board of Trade 1887; 4 Mor. 70).

Where at the first audit the affidavit of no receipts or payments is furnished under Rule 291, the trustee should forward therewith two copies of the Official Receiver's account of receipts and payments as shown by the estate cash-book on transfer to the trustee (Board of Trade Regulations).

An order of the Court annulling an adjudication does not relieve a trustee from the liability imposed on trustees by the Acts and Rules to account to the Board of Trade for all transactions of such trustee in connection with the estate (Rule 194 (3)).

The following is an extract from the Board of Trade Regulations as to the form of the accounts:—

Each receipt and payment should be entered in the cash-book in such detail as will fully explain its nature. Payments for rent, salaries, wages, etc., due at the date of the receiving order should be entered under the head of preferential payments, and carefully distinguished from similar payments which may arise or become necessary while carrying on trade; the latter should be entered into a separate trading account (Rule 308). Petty expenses should be entered in the estate cash-book in sufficient detail to show that no estimated charges are made, and vouchers should, where possible, be obtained and forwarded for audit.

All bank transactions, whether with local banks or the Bankruptcy Estates Account, should be duly entered in bank columns. The cash-book must record the actual dates upon which all moneys are received on account of an estate, and the payments out should be entered as of the date when the cheques are issued, except in the case of dividends, which should be entered as of the date when the cheques are received, and the total amount of such dividends should be charged in the cash-book in one sum. In the case of any sale by private contract, the account should show the name, address, and occupation of the purchaser, and the mode in which

the amount of the purchase-money has been arrived at. The trustee is accountable for the proceeds of every auction sale authorised by him, and the gross proceeds must be collected and treated under the head of receipts, and the auctioneer's charges included amongst the payments, provided they have been duly taxed. In the case of partners, distinct accounts are to be kept and rendered of the joint and separate estates.

Where a parochial or other local rate is levied payable by instalments, any of which fall due at a date subsequent to the date of the receiving order, only such instalments as were actually due at the date of the receiving order are payable in full under the terms of the Preferential Payments in Bankruptcy Act 1888. Rates or instalments of rates are only payable for the period during which the premises in respect of which the claim is made are in the actual occupation of the debtor or the trustee. Claims for gas and water supplied prior to the receiving order do not come within the terms of the Preferential Payments in Bankruptcy Act 1888, and are not payable in full except in cases where the authorities have power to recover the amount due in the same way in which a landlord can recover rent in arrear—that is, by way of distress without legal process, in which event the claim may be paid provided the property available for distress is of sufficient value. Tithes are not payable in full under the Preferential Payments in Bankruptcy Act 1888, and should only be so paid where after the prescribed notice there is property of the debtor upon which distress can be levied. Not more than two years' tithes are recoverable by distress.

Removal.—If a receiving order is made against a trustee he shall thereby vacate his office of trustee (1883 Act, sec. 85).

The creditors may, by ordinary resolution at a meeting specially called for that purpose, of which seven days' notice has been given, remove a trustee appointed by them, and may at the same or any subsequent meeting appoint another person to fill the vacancy, as provided in case of a vacancy in the office of trustee (1883 Act, sec. 86).

Where one-fourth in value of the creditors desire that a general meeting of the creditors may be summoned to consider the propriety of removing the trustee, such meeting may be summoned by a member of the committee of inspection, or by the Official Receiver, on the deposit of a sum sufficient to defray the expenses of summoning such meeting (Rule 311).

The vote of the trustee or of his partner, clerk, solicitor, or solicitor's clerk, either as creditors or as proxy for creditors, shall not be reckoned in the majority required for passing any resolution affecting the conduct of the trustee (1883 Act, sec. 88).

If the Board of Trade are of opinion that a trustee appointed by the creditors is guilty of misconduct or fails to perform his duties under the Bankruptcy Acts, the Board may remove him from his office; but if the creditors by ordinary resolution disapprove of his removal, he or they may appeal against it to the High Court (1883 Act, sec. 86).

If a trustee at any time retains in his own hands for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case may authorise him to retain, then, unless he explains such retention to the satisfaction of the Board, he is (*inter alia*) liable to be removed from his office as trustee (1883 Act, sec. 74).

The power of the Board of Trade to remove a trustee shall extend to any case in which the Board are of opinion that the trustee is by reason of lunacy or continued sickness or absence incapable of performing his duties, or that his connection with or relation to the bankrupt or his estate or any

particular creditor might make it difficult for him to act with impartiality in the interests of the creditors generally, or where in any other matter he has been removed from office on the ground of misconduct (1890 Act, sec. 19).

If the trustee purchases the estate or any part thereof, the transaction may be set aside by the Court (Rule 316), and the act constitutes a ground for the removal of the trustee (*ex parte* Reynolds, 2 M. and A. 492).

Where a trustee refuses to carry on an action which is considered beneficial to the estate, the creditors may apply for his removal (*ex parte* Phillips, 2 M. and A. 530).

Where two or more trustees have been appointed, any one of them may be removed without affecting the other or others (*ex parte* Newitt, *re* Mansel, 1884, 14 Q.B.D. 177).

Where a trustee has given security in the prescribed manner, but fails to keep up such security, the Board of Trade may, if they think fit, remove him from his office (Rule 302).

Where a trustee is removed by the Board of Trade, notice of the order removing him shall at once be transmitted by the Board of Trade to the Registrar of the Court, who shall file the notice with the proceedings in the matter, and give written notice thereof to the Official Receiver. The Board of Trade shall also cause a notice of the order to be gazetted (Rule 303).

Upon a trustee being removed he must deliver over to the Official Receiver, or, as the case may be, to the new trustee, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of trustee (Rule 292). A notice by the Board of Trade served on a trustee (who has been removed) requiring him to comply with this rule may be enforced by an order of the Court (*re* Hincks and Radcliffe, *ex parte* Board of Trade, 1891, 8 Mor. 295).

A trustee who has been removed must none the less make formal application to the Board of Trade for his release.

It shall be sufficient reason for refusing to certify the appointment of a person as trustee, that in any other proceeding under the Act such person has been removed from the office of trustee by the Board of Trade for misconduct or neglect of duties (Rule 301).

Resignation.—A trustee intending to resign his office shall call a meeting of creditors to consider whether his resignation shall be accepted or not, and shall give not less than seven days' notice of the meeting to the Official Receiver (Rule 304).

Upon a trustee resigning he must deliver over to the Official Receiver, or, as the case may be, to the new trustee, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of trustee (Rule 292).

The trustee so resigning must make application to the Board of Trade for his release.

On a vacancy in the office of trustee the same proceedings must be taken as to a reappointment as in the case of a first appointment.

Release.—When a trustee has realised all the property of the bankrupt, or so much thereof as can in his opinion be realised without needlessly protracting the trusteeship, and distributed a final dividend, if any, or has ceased to act by reason of a composition having been approved, or has resigned, or has been removed from his office, the Board of Trade shall, on his application, cause a report of his accounts to be prepared, and on his complying with all the requirements of the Board, shall take into consideration the report and any objection which may be urged by any creditor or

person interested against the release of the trustee, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal to the High Court (1883 Act, sec. 82).

A trustee, before making application to the Board of Trade for his release, shall give notice of his intention so to do in the prescribed form to all the creditors of the debtor who have proved their debts, and to the debtor, and shall send with such notice a summary of his receipts and payments as trustee in the prescribed form. Provided that where such application is made upon the trustee ceasing to act by reason of a composition having been approved, such notice and summary shall be sent to the debtor only (Rule 309).

On every application for release by trustees (in non-summary cases) a fee stamp is payable at the rate of 2s. 6d. on every £100 or fraction of £100 of assets realised and brought to credit. With his application for release the trustee must forward a copy of the notice and summary issued to the creditors, and an affidavit that such notice and summary were duly posted to all the creditors who have proved their debts, and to the debtor (Board of Trade Regulations). The affidavit must bear a 2s. bankruptcy stamp.

Where the release of a trustee is withheld, the Court may, on the application of any creditor or person interested, make such order as it thinks just charging the trustee with the consequences of any act or default he may have done or made contrary to his duty.

An order of the Board releasing the trustee shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as trustee, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

Where the trustee has not previously resigned or been removed, his release shall operate as a removal of him from his office, and thereupon the Official Receiver shall be the trustee (1883 Act, sec. 82).

Where the Board of Trade have granted to a trustee his release, a notice of the order granting such release shall be gazetted. The trustee must provide the requisite fee stamp (5s.), but it may be charged against the estate (Rule 310).

The release of a trustee shall not take effect unless and until he has delivered over to the Official Receiver all the books, papers, documents, and accounts which, by the bankruptcy rules, he is required to deliver over on his release (Rule 310A).

PROOF OF DEBT, *i.e. Evidence or Testimony of the existence of a Debt or Liability.*—In bankruptcy procedure every creditor must, at his own expense, prove his debt. This may be done by delivering or sending through the post in a prepaid letter to the Official Receiver, or trustee, as the case may be, an affidavit verifying the debt. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor, but such person must state his authority and means of knowledge. The affidavit should contain, or refer to, a statement of account showing particulars of the debt, and should specify vouchers, if any, by which the same can be substantiated. These vouchers can be called for at any time should it be considered necessary, and the consideration for a proof of debt can always be inquired into, even when it is founded on a judgment debt (1883 Act, 2nd Sch., Rules 1, 2, 3 and 4, and *ex parte* Banner 1881, 17 Ch.D. 480 C.A.).

If any creditor in any bankruptcy wilfully and with intent to defraud makes any false claim, or any proof, declaration, or statement of account

which is untrue in any material particular, he shall be guilty of a misdemeanour, punishable with imprisonment not exceeding one year (Debtors Act 1869, sec. 14).

Any person adjudged bankrupt is deemed guilty of a misdemeanour, and on conviction thereof is liable to be imprisoned for any time not exceeding two years, if, knowing or believing that a false debt has been proved by any person under the bankruptcy, he fails for the period of one month to inform the trustee thereof (*ibid.* sec. 11, sub-section 7).

Every proof of debt for a sum exceeding £2 must have a shilling stamp (of the proper denomination) affixed thereto, provided that proofs of debt for workmen's wages (*infra*) and King's taxes are exempt from stamp duty.

Where there are numerous claims for wages by workmen and others employed by the debtor, it is sufficient if *one proof* is made for all such claims, either by the debtor, a foreman, or some other person (according to circumstances) acting on behalf of all such workmen or others. The proof must be in the prescribed form; and in the schedule provided, the names of all the workmen and others must be set forth, together with the amounts severally due to them; and any such proof shall have the same effect as if *separate* proofs had been made by each of the said workmen and others (Rule 220).

A creditor who has lodged a proof is entitled to inspect the proofs of other creditors (1883 Act, 2nd Sch., Rule 7).

A creditor must deduct from his debt all trade discounts, but he need not deduct any discount not exceeding five per centum on the net amount of his claim which he may have agreed to allow for payment in cash (1883 Act, 2nd Sch., Rule 8).

For the purpose of their duties in respect of proofs, the trustee, Official Receivers, and certain officials in the various bankruptcy courts (*e.g.* Registrar's clerk) may administer oaths and take affidavits, for which there appears to be no fee chargeable (1883 Act, 2nd Sch., Rules 26 and 27).

The trustee shall examine every proof and the grounds of the debt, and, subject to the power of the Court to extend the time, the trustee, other than the Official Receiver, within twenty-eight days after receiving a proof which has not previously been dealt with by the Official Receiver, shall, in writing, either admit or reject it wholly or in part, or require further evidence in support thereof. Provided that where the trustee has given notice of his intention to declare a dividend, he shall, within seven days after the date mentioned in such notice as the latest date up to which proofs must be lodged, examine and in writing admit or reject every proof which has not been already admitted or rejected, and give notice of his decision rejecting a proof wholly or in part to the creditor affected thereby (1883 Act, 2nd Sch., Rule 22, and General Rule 228).

Subject to the power of the Court to extend the time, no application to reverse or vary the decision of an Official Receiver or trustee in rejecting a proof shall be entertained after the expiration of twenty-one days from the date of the decision complained of (Rule 230).

Every trustee in bankruptcy, other than the Official Receiver, shall, on the first day of every month, send to the registrar a certified list of all proofs, if any, received by him from the Official Receiver, or otherwise tendered during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall transmit the proofs themselves for the purpose of being filed (Rule 225).

PROOF IN RESPECT OF BILLS OF EXCHANGE.—As a general rule, the holder of a bill of exchange or promissory note may prove for the full amount thereof against the estate of all parties liable thereon until he receives twenty shillings in the pound, but if he has received a dividend, or a dividend has been declared from any one estate, *before proof* has been made on another estate, then such dividend must be deducted from the value of the bill, and proof be made for the balance only, against such estates in respect of which proofs have not already been lodged.

The above rule has been long established, being based upon four decisions given between 1722 (*ex parte* Ryswicke) and 1750 (*ex parte* Wyldman). In the latter case, Hardwicke, L.C., said:—

"Although the obligee may have *several obligors*, he can only have *one satisfaction*—the same in bills of exchange—actions lay against the drawer and all the indorsers, but there is to be only one satisfaction."

So that the holder cannot receive more than twenty shillings in the pound, and he must produce his bill or note (unless the Court dispense with such production) for the indorsement thereon by the trustee, of the amount of each dividend as and when he receives same; but where the bill has been lost, the person who was the holder may nevertheless prove in respect thereof, and the loss of the instrument shall not be set up, provided satisfactory indemnity be given against the claims of any other person in respect of the instrument in question (Rule 233, and Bills of Exchange Act 1882, sec. 70).

A holder of two bills of exchange proving in the bankruptcy of the last indorser of both, cannot set off a surplus over twenty shillings in the pound in respect of one bill (which would have been obtained by reason of his having also proved against the estates of prior indorsers) as against a deficiency on the other bill, but both bills must for the purposes of proof be treated as constituting two distinct transactions, and the surplus as to one bill must be brought into account without regard to the deficiency on the other bill (*in re* Morris, *Accountant Law Reports*, 1899, p. 22).

Rule in ex parte *Waring*.—When the estates of both the drawer and acceptor of a bill are insolvent, and are being judicially administered, or are under a *forced* administration, and securities have been specifically appropriated to meet the bill at maturity, and have been lodged for that purpose by the drawer with the acceptor, then the bill-holder, although not party or privy to the appropriation, is entitled to have the specific securities applied in or towards payment of the bill. If such proceeds do not fully satisfy the holder's claim in respect of the bill, he may prove for the balance against *both estates*, subject to his receiving not more than twenty shillings in the pound.

The above rule of administration was laid down by Lord Eldon in 1815, and in *ex parte* Dever, *re* Suse (No. 2), 1885, 14 Q.B.D. 611, Cotton, L.J., thus refers to it:—

"The Court finds in the hands of the bankrupt certain property which has been remitted to him by another person (who has also become bankrupt) to secure him against a liability which he has undertaken upon bills drawn on him by that person. The property cannot be applied in paying the *general* creditors of the acceptor, because it was in his hands impressed with a *trust*, nor can it go to pay the general creditors of the drawer, because he was not entitled to have it back without meeting the acceptances. The Court thereupon applies the property in such a way as will carry out, as far as possible, the equities between the two estates, viz. in paying the acceptances to cover which the property was deposited."

In *Banner* v. *Johnston*, 1871, 5 H.L. 157, Lord Cairns said:—

"It has always been most carefully said that the right of the bill-holder under *ex parte* Waring is not a right founded on contract: it does not spring out of the contract, but it springs out of the *necessities* connected with the administration of two insolvent estates."

Cross-Accommodation Acceptances.—Where mutual accommodation has been afforded by two firms or individuals who both become bankrupt, proof is not allowed in respect of the balance of the dishonoured *bills*, but only for the balance of *cash* between the parties, on an account being taken of the sums they have respectively paid $\frac{\text{and}}{\text{or}}$ received in respect of the transactions (*ex parte* Walker, 1798, 4 Ves. 373). Should there be a surplus, however, on the estate which is found ultimately liable as between the two, such surplus would be applicable towards payment of the bills.

Where, however, there has been an exchange of specific (accommodation) acceptances, the bills are not treated as accommodation bills as regards proof in bankruptcy; for as the acceptance of the one party has been held to be consideration for the acceptance of the other, the right of proof is on the *bills* themselves, and is not in respect of the *cash* actually paid for the accommodation of the bankrupt. The question as to whether there has been a *specific* exchange is one of fact, but it is not necessary that the amounts or dates of the bills be identical, nor that the acceptances so exchanged should be the acceptances of the parties themselves (*Rolfe* v. *Caslon*, 1795, 2 H.Bl. 570; *Buckler* v. *Buttivant*, 1802, 3 East, 72).

Any variation in the dates of payment would, however, afford evidence as to whether the parties had or had not transferred the bills in consideration of each other, but *semble* an agreement by each party to pay his *own* acceptances is conclusive evidence that the bills were transferred in consideration of each other (*Cowley* v. *Dunlop*, 1798, 7 T.R. 565). Although each party (having agreed, in the case of a specific exchange of bills, to pay his own acceptances) may prove upon the *bills* and not upon the cash actually paid for accommodation, it must be noted that a party cannot prove in the bankruptcy of the drawer for any payment he may have made on his own acceptance, for there is no implied indemnity against cross-accommodation acceptances under such circumstances. Each party relied upon the remedy on the bill he took in exchange for his own, and (in the words of Lord Ellenborough) "the party as acceptor has no remedy against the drawer for the payment of his own acceptance, because *he did not accept in consideration of a promise of indemnity*, but in consideration of an agreement, or rather of an actual and executed delivery of other acceptances."

Where an "exchange of paper" has taken place, and the parties are not all insolvent, a solvent party cannot prove in respect of the bills he holds until he has paid off, taken up, or otherwise satisfied the holders of his own paper, to which the bankrupt is a party.

Accommodation Bill.—The party accommodated has (ordinarily) no right of proof on the bill against the estate of the accommodation party, but a *bona fide* holder for value may prove in respect thereof.

When a bill which has been accepted for the accommodation of the drawer is deposited by him as security for a debt *less* than the amount of the bill, the holder is entitled to prove in the bankruptcy of the acceptor for the *full* amount of the bill, although he cannot receive dividends in excess of the debt due to him by the drawer (*ex parte* Newton, *re* Bunyard, 1880, 16 Ch.D. 330).

A discounter may prove for the full amount of a bill (*i.e.* without deducting the discount), and a *bona fide* holder who has purchased a bill for

less than the amount of it may so prove. A purchaser of bills is also allowed to prove in respect of same, even when acquired after the bankruptcy, if at the time of the bankruptcy such bills were in the hands of persons who would have been entitled to prove. And although an assignment of a bill cannot be made after the assignee has notice of an act of bankruptcy in order to give him a right of set-off as against the trustee in bankruptcy, if a person is himself liable upon a bill and is *compelled* to take it up, he will have a right of set-off in respect of the bill as against any claim the trustee may have against him.

Unmatured Acceptance.—The holder may prove (subject to rebate of interest at the rate of five per cent per annum) against the estate of the acceptor, or against the estate of the drawer or an indorser, even before dishonour.

A creditor shall not *vote* in respect of any debt on, or secured by, a current bill of exchange or promissory note held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon *antecedently* to the debtor, and against whom a receiving order has not been made, *as security in his hands*, and to estimate the value thereof, and for the purpose of voting, *but not for the purposes of dividend*, to deduct it from his proof (1883 Act, 1st Schedule, Rule 11).

A bill of exchange, a promissory note, or other negotiable instrument, in respect of which a creditor seeks to prove, must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, chairman of the meeting, or trustee, as the case may be, before the proof in respect thereof can be admitted *either for voting* or dividend (Rule 221); and (as already stated) unless the Court, for any special reason, dispense with production, every bill or note upon which proof has been made must be exhibited to the trustee before the payment of a dividend thereon, so that the amount of the dividend paid may be indorsed thereon (Rule 233).

Debts Provable.—All debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the *receiving order*, shall be deemed to be debts provable in bankruptcy, *with* the following exceptions:—

(*a*) Unliquidated damages arising out of a tort, and

(*b*) Debts which, in the opinion of the Court, are incapable of being fairly estimated (1883 Act, sec. 37).

If judgment has been obtained in an action of tort, before the date of the receiving order, the claim becomes a judgment debt and is provable, but the consideration for a judgment debt may be inquired into. "If a judgment were conclusive, a man might allow any number of judgments to be obtained by default against him by his friends or relations without any debt being due on them at all" (James, L.J.)

With regard to a debt contracted by a person with the debtor, after notice of an available act of bankruptcy having been committed by the debtor, it has recently been held that section 37 (2) of the Bankruptcy Act 1883 does not provide that such a debt is "not provable" in the bankruptcy, but only that the creditor is under a personal disability in respect of proof (*Buckwell* v. *Norman*, Accountant Law Reports, 1898). If, therefore, the debt (but for the notice of an act of bankruptcy) would have been a provable debt, the creditor has no remedy—he cannot prove in the bankruptcy, being *personally* debarred, nor can he sue the debtor after he

[illegible] releases him from all debts [illegible]

[illegible] holder who, being himself [illegible] after notice of an act of [illegible]

[illegible] are in respect of [illegible] where a debtor is [illegible] composition or scheme which [illegible] for some reason not [illegible] respects which has been contracted [illegible] in the bankruptcy (1890 [illegible]

[illegible] are not provable, [illegible]

[illegible] and proved for.

[illegible] alimony which have [illegible] An order for the pay- [illegible] according to the means [illegible] a value upon the [illegible] v. *Linton*, [illegible] of the obliga- [illegible] payments but also [illegible] or partially relieve [illegible] and it was decided [illegible] alimony even though [illegible] in the bankruptcy. [illegible] respect of these ranking [illegible] are not fraudulent as [illegible]

[illegible] or statute-barred [illegible]

[illegible] and also the [illegible] wound up or not [illegible]

[illegible] Preferential Payments [illegible] proof for future [illegible] under an agreement [illegible] the unexpired [illegible] of his obtaining [illegible] less an allowance [illegible]

[illegible] —

[illegible] any compensation [illegible] of an obligation to [illegible] any express or implied [illegible] whether the breach does or [illegible] of occurring before [illegible] any express or [illegible] capable of result- [illegible] whether the payment is, [illegible] as respects time, present or [illegible] on two or more [illegible] capable of being ascertained by [illegible]

Where there have been mutual credits, mutual debts, and other mutual dealings between a debtor against whom a receiving order shall have been made under this Act, and any other person proving or claiming to prove a debt under such receiving order, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be a set-off against the sum due from the other party, and *the balance of the account and no more* shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a debtor in any case where he had, at the time of giving credit to the debtor, *notice of an act of bankruptcy* committed by the debtor and available against him (1883 Act, sec. 38).

PROXIES.—A creditor may prove either in person or by proxy.

General and special forms of proxy are sent to the creditors with the notice summoning the meeting, and neither the name nor description of the Official Receiver or of any other person is allowed to be printed or inserted in the body of any instrument of proxy before it is so sent.

A creditor may give a general proxy to his manager or clerk, or any other person in his regular employment. In such a case, the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor.

A creditor may give a special proxy to any person to vote at any specified meeting, or adjournment thereof, on all or any of the following matters:—

(*a*) For or against a specific proposal for a composition or scheme of arrangement.

(*b*) For or against the appointment of any specified person as trustee at a specified rate of remuneration, or as member of the committee of inspection, or for or against the continuance in office of any specified person as trustee or member of a committee of inspection.

(*c*) On all questions relating to any matter, other than those above referred to, arising at any specified meeting or adjournment thereof (1890 Act, sec. 22).

A creditor may appoint the Official Receiver to act (in manner prescribed) as his general or special proxy.

A proxy shall not be used unless it is lodged with the Official Receiver or Trustee not later than 4 o'clock on the day before the meeting at which it is to be used (Rule 245).

No person shall be appointed a general or special proxy who is a minor.

PROPERTY DIVISIBLE AMONGST CREDITORS.—The trustee shall, as soon as may be, take possession of the deeds, books, and documents of the bankrupt, and all other parts of his property capable of manual delivery (1883 Act, sec. 50).

Note.—In the Bankruptcy Acts, unless the context otherwise requires, "property" includes money, goods, things in action, land, and every description of property, whether real or personal, and whether situate in England or elsewhere; also obligations, easements, and every description of estate, interest and profit, present or future, vested or contingent, arising out of, or incident to, property as above defined (1883 Act, sec. 168).

Section 44 of the Act provides:—

The property of a bankrupt divisible amongst his creditors, and referred to in the Bankruptcy Acts as the property of the bankrupt, *does not comprise* the following:—

(1) Property held by the bankrupt on trust for any other person.

Note.—This will include goods in the bankrupt's possession as factor, the property in such a case, where capable of being traced (though its character be changed), belonging to the bankrupt's principal.

(2) The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole (these are sometimes referred to as the "excepted articles").

Note.—Apparently the "tools of trade" for this purpose include only such implements as would be necessary to enable a working man to earn his living, and the exception does not extend to "plant," *e.g.* it has been decided that a printing press is not a tool.

The personal earnings of a bankrupt do not vest in his trustee, but a recent decision justifies the assumption that only such part of the earnings as are "reasonably necessary" to maintain the bankrupt and his family are within the exception. *A fortiori*, if the bankrupt, before his discharge, becomes possessed periodically of an amount in excess of his requirements, such earnings might be made available for creditors by obtaining an order under section 53 (*re* Graydon, *ex parte* Official Receiver, 1896, 1 Q.B. 417; *re* Rogers, *ex parte* Collins, 1894, 1 Q.B. 425).

In the event of the death of a bankrupt his trustee cannot exercise a general power of appointment which was vested in the deceased (Nichols to Nixey, 29 Ch.D. 1005), nor does the right of a husband to administer his wife's estate pass to his trustee in bankruptcy (*re* Turner, 1886 12 P.D. 18).

But the property divisible amongst the bankrupt's creditors *does comprise* and extend to the following:—

(1) All such property as may belong to, or be vested in, the bankrupt at the commencement of the bankruptcy, or may be acquired by, or devolve on, him before his discharge.

(2) The capacity to exercise, and to take proceedings for exercising, all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or before his discharge, except the right of *nomination* to a vacant ecclesiastical benefice.

Note.—Rights of action to recover damages, whether in respect of torts or breaches of contract resulting immediately in injuries wholly to the person or feelings of the bankrupt by way of mental or bodily suffering, do not pass to the trustee or creditors (*Stanton* v. *Collier*, 1854, 23 L.J.Q.B. 116; *Beckham* v. *Drake*, 1849, 2 H.L.C. 579).

(3) All goods being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, in his trade or business, by the *consent and permission* of the true owner, under such circumstances that he is the *reputed owner* thereof, provided that things in action other than debts due or growing due to the bankrupt in the course of his trade or business shall not be deemed to be goods within the meaning of this section (1883 Act, sec. 44). This is sometimes referred to as the "order and disposition" clause.

Where a bankrupt is a beneficed clergyman, the trustee may apply for a sequestration of the profits of the benefice (1883 Act, sec. 52).

Where a bankrupt is an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, the trustee shall receive for distribution amongst his creditors so much of the bankrupt's pay or salary as the Court, on the application of the trustee, with the consent of the chief officer of the department under which the pay or salary is enjoyed, may direct.

Where a bankrupt is in receipt of a salary or income other than as aforesaid, or is entitled to any half-pay or pension, or to any compensation granted by the Treasury, the Court, on the application of the trustee, shall from time to time make such order as it thinks just for the payment of the salary, income, pension, half-pay, or compensation, or of any part thereof, to the trustee, to be applied by him in such manner as the Court may direct.

Nothing in this section shall take away or abridge any power of the chief officer of any public department to dismiss a bankrupt, or to declare the pension, half-pay, or compensation of any bankrupt to be forfeited (1883 Act, sec. 53).

The above provisions are substantially the same as those in sections 89 and 90 of the Act of 1869, and it was decided under that Act that in order to come within these sections the payment must be one to which the bankrupt had a legal or equitable claim, and thus an order could not be made for the payment to the trustee by a bankrupt of any portion of a *purely voluntary* allowance made to him (*ex parte* Wicks, 1881, 17 Ch.D. 70).

If a creditor seeks to prove in an English bankruptcy, he must bring into the common fund any part of the debtor's estate which he has already received abroad (*Selkrigg* v. *Davies*, 1814, 2 Rose 97), except property to which he was entitled by reason of a lien or charge (*re* Somes, *ex parte* De Lemos, 1896, 3 Mans. 131).

The property of the bankrupt shall pass from trustee to trustee, including under that term the Official Receiver when he fills the office of trustee, and shall vest in the trustee for the time being during his continuance in office, without any conveyance, assignment, or transfer whatever.

The certificate of appointment of a trustee shall, for all purposes of any law in force in any part of the British dominions requiring registration, enrolment, or recording of conveyances or assignments of property, be deemed to be a conveyance or assignment of property, and may be registered, enrolled, and recorded accordingly (1883 Act, sec. 54).

The trustee shall, in relation to and for the purpose of acquiring or retaining possession of the property of the bankrupt, be in the same position as if he were a receiver of the property appointed by the High Court, and the Court may, on his application, enforce such acquisition or retention accordingly.

Where any part of the property of the bankrupt consists of stocks, shares in ships, shares, or any other property transferable in the books of any company, office, or person, the trustee may exercise the right to transfer the property to the same extent as the bankrupt might have exercised it if he had not become bankrupt.

Where any part of the property of the bankrupt is of copyhold or customary tenure, or is any like property passing by surrender and admittance, or in any similar manner, the trustee shall not be compellable to be admitted to the property, but may deal with it in the same manner as if it had been capable of being, and had been, duly surrendered or otherwise conveyed to such uses as the trustee may appoint; and any appointee of the trustee shall be admitted to or otherwise invested with the property accordingly.

Where any part of the property of the bankrupt consists of things in action, such things shall be deemed to have been duly assigned to the trustee (1883 Act, sec. 50).

EXEMPTION FROM STAMP DUTY.—Section 144 of the Act of 1883, provides that every deed or other document relating to real or personal

property which is part of the estate of the bankrupt, and every instrument relating solely to any proceeding under any bankruptcy, shall be exempt from stamp duty except in respect of fees under the Bankruptcy Acts. This provision (although in practice often overlooked) applies *inter alia* to receipts given by trustees, receipts given by creditors for dividends, receipts for costs payable for work done for the trustee, and cheques drawn on a banking account kept solely for the purposes of bankrupts' estates (Board of Trade Regulations). Where a local bank account has been sanctioned, a trustee should therefore make application for an unstamped cheque-book.

AFTER-ACQUIRED PROPERTY.—Until the trustee intervenes, all transactions by a bankrupt after his bankruptcy with any person dealing with him *bonâ fide* and for value, in respect of his after-acquired property, whether with or without knowledge of the bankruptcy, are valid against the trustee (*Cohen* v. *Mitchell*, 1890, 25 Q.B.D. 262); but this doctrine, while extending to leaseholders (*re* Clayton *v.* Barclay, 1895, 2 Ch. 212), was held not to apply to freehold property (*re* New Land Development Association, 1892, 2 Ch. 138), the reason for the exception in favour of freeholders being that it was inadvisable to make the question of the non-intervention of the trustee a link in the title to the property. When an undischarged bankrupt, without his trustee's knowledge, acquired further property, and carried on business and again became bankrupt, it was held that the trustee in the *first* bankruptcy was entitled to such property, and to take it without any obligation to satisfy any of the liabilities incurred by the bankrupt since the first bankruptcy (*re* Clark, *ex parte* Beardmore, 1894, 2 Q.B. 393).

DISCLAIMER.—A trustee in bankruptcy may disclaim land of any tenure, burdened with onerous covenants, contracts, shares, stocks, or other property unsaleable or not readily saleable owing to its possession entailing the payment of money or the performance of any onerous acts. This right is not affected by the exercise of any acts of ownership by the trustee over the property, whether in an endeavour to sell, in taking possession of it, or otherwise. The disclaimer must be in writing, signed by the *trustee* (the signature of the trustee's solicitor is not sufficient), and made within twelve months of the first appointment of a trustee, or if the property should not come to his knowledge within one month of his appointment, the disclaimer should be made within twelve months after the trustee first becomes aware of it. Should, however, any person interested make application in writing requiring the trustee to decide whether he will disclaim or not, he must so decide within twenty-eight days after the receipt of such application, otherwise he loses his right of disclaimer, and in the case of a contract, if the trustee after such application does not within the proper period disclaim the contract, he is deemed to have adopted it (but see *infra*). All the above periods may, however, be extended by the Court in a proper case (1883 Act, sec. 55, and 1890 Act, sec. 13).

Leaseholds can only be disclaimed with the leave of the Court except—

(1) Where the premises have not been sub-let, nor any mortgage created on the lease; and

(*a*) The rent is less than £20 per annum; or

(*b*) The estate is being summarily administered; or

(*c*) The lessor has been served with notice of intention to disclaim, and does not within seven days give notice that he requires the matter to be brought before the Court.

(2) Where the premises have been sub-let or a mortgage has been created on the lease, and the lessor, sub-lessee, or mortgagee has been served

with notice of intention to disclaim, and none of such persons have within fourteen days required the matter to be brought before the Court.

A disclaimer made without leave of the Court, in pursuance of this rule, will not be void or otherwise affected on the ground *only* that the notice required by the rule has not been given to *some* person who claims to be interested in the demised property. Where any person claims to be interested in any part of the property of the bankrupt burdened with onerous covenants, he must, at the request of the Official Receiver or trustee, furnish a statement of the interest so claimed by him (Rule 320).

Where the trustee is entitled to disclaim without leave, the Court cannot impose terms (*e.g.* order compensation to the landlord) (*ex parte* Zerfass, *re* Sandwell, 1885, 14 Q.B.D. 960).

Where a trustee disclaims a *leasehold* interest he must forthwith file the disclaimer with the proceedings in Court, and the disclaimer must contain particulars of the interest disclaimed, and a statement of the persons to whom notice of the disclaimer has been given. Until the disclaimer is filed by the trustee the disclaimer is inoperative (Rule 320).

A disclaimer operates to determine from the date of the disclaimer the rights and liabilities of the bankrupt, and also discharges the trustee from all personal liability in respect of the property disclaimed as from the date when it *vested* in him, but, except so far as is necessary for releasing the bankrupt and his property and the trustee from liability, a disclaimer does not affect the rights of other persons (1883 Act, sec. 55).

If a trustee does not disclaim a lease he becomes *personally* responsible for the rents and covenants as from the date of his appointment—that is, from the date the lease first vested in him, irrespective of the question of actual or beneficial occupation by him (*Titterton* v. *Cooper*, 1882, 9 Q.B.D. 473). But the trustee is entitled to indemnity from the estate.

As the disclaimer of an onerous lease is not now retrospective, but operates from the date of the disclaimer if duly filed in court, the trustee may before disclaiming remove the tenant's fixtures or call upon the landlord to take them over at a valuation. Should the landlord decline to pay for the fixtures he must give the trustee reasonable time and opportunity to remove them.

On the application of any party claiming an interest in any disclaimed property, the Court may make a vesting order on such terms as it may think fit, and the property vests without further conveyance or assignment. In the case of leaseholds, the vesting order will be made in favour of a sub-lessee or mortgagee, on the condition that he takes the property with the same liabilities as the bankrupt was subject to at the date of the petition, but under the Act of 1890 (sec. 13) the Court has now a further discretion in the matter, and may vest the property, subject to the same liabilities and obligations as if the lease had been *assigned* at the date of the petition, and (if it be necessary) as if the lease comprised only the property dealt with in the vesting order. If no person claiming *under* the bankrupt is willing to accept a vesting order under such terms, the Court may vest the bankrupt's interest in any person in any way liable to perform the lessee's covenants, but freed and discharged from all incumbrances created by the bankrupt (1883 Act, sec. 55).

It is now settled that the lessor may apply for a vesting order as well as the parties claiming *under* the bankrupt (*re* Cock, *ex parte* Shilson, 1887, 20 Q.B.D. 343).

A trustee in bankruptcy may disclaim shares held by the bankrupt in a company (registered under the Companies Act 1862) either before or

after the commencement of the winding up, notwithstanding the provisions of section 153 of that Act.

With regard to unprofitable contracts which have not been disclaimed, some difference of opinion exists as to the meaning of the words of section 55, sub-section 4, of the 1883 Act, to the effect that if the trustee does not disclaim the contract "*he shall be deemed to have adopted it.*"

(1) In case of adoption the trustee will be held to be personally liable in respect of the contract, subject to such indemnity as he may be entitled to out of the estate (Robson).

(2) The effect of the provision as to adoption of the contract is not to make the trustee personally liable, but only to effect a *novation* by which the trustee as representing the body of creditors is substituted as the party liable, for the trustee as representing the bankrupt contractor (Williams; also Benjamin on *Sale*).

Any person injured by the operation of a disclaimer is deemed to be a creditor of the bankrupt to the extent of the injury, and may accordingly prove for the same as a debt under the bankruptcy (1883 Act, sec. 55, sub-sec. 7).

In the case of a lease, the measure of damages under a disclaimer would ordinarily be the present value of the difference between the rent payable under the lease and the rent obtainable for the residue of the term in the event of the premises being relet; if there is a liability for dilapidations, that would need to be considered also. Where the premises can be relet at a similar rent, there would be no injury (so far as regards rent) as a result of the disclaimer; compensation may also be payable to a lessor in respect of occupation by the trustee where such occupation has produced a benefit to the bankrupt's estate, "or was contemplated as likely to produce a benefit."

In the case of shares of a company, the company (whether being wound up or not) may prove for the whole amount unpaid on the shares, even though not called up at the date of the receiving order. These measures of damage as to shares are respectively subject to any value in the shares which the company may acquire by reason of the disclaimer.

The provisions of the Bankruptcy Acts relative to a trustee's power of disclaimer are binding on the Crown (1883 Act, secs. 55 and 150; 1890 Act, sec. 13).

Effect of Bankruptcy on Antecedent Transactions

A. *Relation Back.*—The bankruptcy of a debtor, whether the same takes place on the debtor's own petition or upon that of a creditor or creditors, shall be deemed to have relation back to, and to commence at, the time of the act of bankruptcy being committed on which a receiving order is made against him, or, if the bankrupt is proved to have committed more acts of bankruptcy than one, to have relation back to, and to commence at, the time of the first of the acts of bankruptcy proved to have been committed by the bankrupt within three months next preceding the date of the presentation of the bankruptcy petition; but no bankruptcy petition, receiving order, or adjudication shall be rendered invalid by reason of any act of bankruptcy anterior to the debt of the petitioning creditor (1883 Act, sec. 43).

B. *Fraudulent or Undue Preference.*—Every conveyance or transfer of property, or charge made thereon, every payment made or obligation incurred, and every judicial proceeding taken or suffered, by any person

unable to pay his debts as they become due, from his own money, in favour of any creditor or any person in trust for any creditor *with a view* of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same is adjudged bankrupt on a bankruptcy petition *presented within three months* after the date of making, taking, paying, or suffering the same, be deemed fraudulent and void as against the trustee in the bankruptcy.

The rights of any person making title in good faith and for valuable consideration *through or under a creditor* of the bankrupt are not affected by the above provisions (1883 Act, sec. 48).

Where a receiving order is made against a judgment debtor in lieu of committal, under the Debtors Act 1869 . . . the provisions as to the avoidance of fraudulent preferences shall apply as if the debtor had been adjudged bankrupt on a bankruptcy petition presented at the date of the receiving order (1890 Act, sec. 20).

The *intention* of the bankrupt is the main factor in deciding whether any given transaction is a "preference" or not, *i.e.* the bankrupt must have acted with a *view* of giving a creditor preference over the other creditors.

Where the transaction is the result of *bona fide* pressure, the trustee in bankruptcy will have some difficulty in making out a case of fraudulent preference. So where a trustee has committed a breach of trust, and before his bankruptcy makes good the breach out of his own property, the trustee in the bankruptcy cannot recover the property, for it has been decided that such an act does not amount to a fraudulent preference, but an endeavour by the bankrupt to cover up his wrong and so prevent proceedings being taken against him (*New's Trustees* v. *Hunting*, 1897. Confirmed by House of Lords, 1899).

Nor does the payment of a debtor's trade bills, in due course and in the ordinary way of business, amount (of itself) to a fraudulent preference, the inference *prima facie* being that the bills are paid not to prefer the bill-holders, but to enable the debtor to continue his business (*re* Clay and Sons, *ex parte* Trustee, 1896, 3 Mans. 31).

To make a conveyance or transfer of property, or to create a charge thereon, which would be void as a fraudulent preference if the transferor were adjudged bankrupt, is now an act of bankruptcy, and the fact that a bankrupt has within three months preceding the date of the receiving order given an *undue* preference to any of his creditors must be considered by the Court when hearing the application for the bankrupt's discharge. "An undue preference," it must be noted, is a wider term than a "fraudulent preference," for although a transaction may not be of such a nature that it could be set aside as fraudulent, it may, nevertheless be "undue," and so affect the bankrupt's discharge.

To avoid an alleged fraudulent preference, the trustee must first prove that the debtor was insolvent when the payment, etc., was made; the party supporting the payment, etc., must then show that it was not made *with a view* of giving him a preference (*re* Eaton and Co., *ex parte* Viney, 1897, 2 Q.B.D. 16).

C. *Fraudulent and Voluntary Conveyances and Settlements.* — The statute 13 Eliz. c. 5 provides that all conveyances and gifts of lands, goods, etc., "to the end, purpose, and with intent to delay, hinder, or defraud creditors and others of their just and lawful actions, debts," etc., shall be utterly void. The Act does not affect conveyances, etc., for valuable consideration and otherwise *bona fide*.

"The principles and rules of the common law, as now universally

known and understood, are so strong against fraud in every shape that the common law would have attained every end proposed by the statute 13 Eliz. c. 5. . . . It cannot receive too liberal a construction or be too much extended in suppression of fraud" (Lord Mansfield).

Section 47 of the Bankruptcy Act 1883 provides that any settlement of property (not being (1) a settlement made before and in consideration of marriage; or (2) made in favour of a purchaser or incumbrancer in good faith and for valuable consideration; or (3) a settlement made on or for the wife or children of the settlor of property which has accrued to the settlor after marriage in right of his wife) shall be void against the trustee in bankruptcy under the following circumstances:—

(1) Where the settlor becomes bankrupt within two years after the date of the settlement;

(2) Where the settlor becomes bankrupt at any subsequent time within ten years after the date of the settlement, *unless the parties claiming under the settlement* can prove that—

(*a*) The settlor was at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; and

(*b*) That the interest of the settlor in such property had passed to the trustee of such settlement on the execution thereof.

It should be noted that, although a settlement may not be impeachable under the Bankruptcy Act 1883, it is still subject to the provisions of 13 Eliz. c. 5. On the other hand, whilst a *past debt* will constitute a valuable consideration for the purposes of the Act of Elizabeth, a conveyance under such circumstances may amount to a fraudulent preference under the Act of 1883.

The word "void" in section 47 of the Act of 1883 (*supra*) should be read as "voidable," so that the title of a *bona fide* purchaser for value from the donee will not be defeated in the event of the subsequent bankruptcy of the donor.

The questions as to whether (1) a purchaser for value could obtain an unimpeachable title under a voluntary settlement before the expiration of the periods mentioned in the Act of 1883, and whether (2) such a title could be forced upon an unwilling purchaser (having ascertained the facts), have been the subject of conflicting decisions.

The point was last decided by the Court of Appeal (*re* Carter and Kenderdine's Contract, 1897, 1 Ch. 776) to the effect that—

(1) A voluntary settlement was not void under section 47, except as against the trustee in bankruptcy of the settlor.

(2) A settlement could not be void as against such a trustee until there was one.

(3) A trustee in bankruptcy could only avoid a settlement as against the volunteers, but a *bona fide* purchaser for value could make a good title; and

(4) The vendors of property who derived their title as grantees under a voluntary settlement could, therefore, force such a title upon the purchaser.

The trustee of a settlement (which but for the bankruptcy of the settlor would have been valid) is entitled to a lien upon the property for expenses properly incurred by him *as trustee*, notwithstanding the subsequent avoidance of the settlement under the above section (*re* Holden, *ex parte* Official Receiver, 1887, 20 Q.B.D. 43).

It was held, prior to 1890, that section 47 does not apply to administra-

tion orders in respect of the estates of deceased debtors, and section 21 of the 1890 Act has apparently not affected this decision.

D. *Ante-nuptial Settlements.*—(1) Where a settlement is made before, and in consideration of, marriage, and the settlor is not at the time of making the settlement able to pay all his debts without the aid of the property comprised in the settlement; or (2) Where a covenant or contract is made in consideration of marriage for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest (not being property of, or in right of, his wife); and the settlor is adjudged bankrupt, or compounds or arranges with his creditors, the Court may refuse or suspend an order of discharge, or grant a conditional discharge, or refuse to approve a composition or arrangement, as the case may be (in like manner as if the debtor had been guilty of fraud) *if it appears* to the Court that

(*a*) Such settlement, covenant, or contract was made in order to defeat or delay creditors; or

(*b*) Was unjustifiable having regard to the state of the settlor's affairs at the time when such settlement was made (Bankruptcy Act 1883, sec. 29).

Marriage being a valuable consideration—"the highest of all considerations"—ante-nuptial settlements are excluded from section 47 of the Act of 1883, and are not *voidable* at the instance of the trustee; but the granting of same under the above circumstances is *punishable* in so far as such an act will affect the bankrupt's discharge.

Where, however, such a covenant or contract is made for the future settlement on or for the settlor's wife or children of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder (not being money or property of, or in right of, his wife), and the settlor becomes bankrupt *before the property or money has been actually transferred or paid* pursuant to the covenant or contract, it will be void against the trustee in bankruptcy, notwithstanding that it was made in consideration of marriage (sec. 47 (2)).

An application to set aside or avoid any settlement or conveyance must be heard and determined in open court (Rule 6).

E. *Protected Transactions.*—Subject to the provisions of the Bankruptcy Acts with respect to the effect of bankruptcy on an execution or attachment, and with respect to the avoidance of certain settlements and preferences, nothing in the Bankruptcy Acts shall invalidate in the case of a bankruptcy—

(*a*) Any payment by the bankrupt to any of his creditors;

(*b*) Any payment or delivery to the bankrupt;

(*c*) Any conveyance or assignment by the bankrupt for *valuable consideration;*

(*d*) Any contract, dealing, or transaction by or with the bankrupt for valuable consideration.

Provided that *both* the following conditions are complied with, viz.:—

(1) The payment, delivery, conveyance, assignment, contract, dealing, or transaction, as the case may be, takes place before the date of the receiving order; and

(2) The person (*other than the debtor*) to, by, or with whom the payment, delivery, conveyance, assignment, contract, dealing, or transaction was made, executed, or entered into, has *not, at the time* of the payment, delivery, conveyance, assignment, contract, dealing, or transaction, notice of any available act of bankruptcy committed by the bankrupt before that time (sec. 49, Bankruptcy Act 1883).

Note.—The onus of proving *want of notice* lies upon the person who claims the protection of the section, and not upon the trustee in bankruptcy.

Effect of Bankruptcy on Creditors

A. *Execution Creditors.*—The rights of judgment creditors who have issued execution against the property of a bankrupt debtor are restricted by the Bankruptcy Acts 1883 and 1890.

Section 45 of the Act 1883 provides:—

(1) Where a creditor has issued execution against the goods or lands of a debtor, or has attached any debt due to him, he shall not be entitled to retain the benefit of the execution or attachment against the trustee in bankruptcy of the debtor unless he has completed the execution or attachment before the date of the receiving order, and before notice of the presentation of any bankruptcy petition by or against the debtor or of the commission of any available act of bankruptcy by the debtor.

(2) For the purposes of this Act an execution against goods is completed by seizure and sale; an attachment of a debt is completed by receipt of the debt; and an execution against land is completed by seizure, or, in the case of an equitable interest, by the appointment of a receiver.

Section 11 of the Act of 1890 provides:—

(1) Where any goods of a debtor are taken in execution, and before the sale thereof or the completion of the execution by the receipt or recovery of the full amount of the levy notice is served on the sheriff that a receiving order has been made against the debtor, the sheriff shall on request deliver the goods and any money seized or received in part satisfaction of the execution to the Official Receiver, but the costs of the execution shall be a first charge on the goods or money so delivered, and the Official Receiver or trustee may sell the goods, or an adequate part thereof, for the purpose of satisfying the charge.

(2) Where under an execution in respect of a judgment for a sum *exceeding twenty pounds* the goods of a debtor are sold or money is paid in order to avoid sale, the sheriff shall deduct his costs of the execution from the proceeds of sale or the money paid, and retain the balance for fourteen days, and if, within that time, notice is served on him of a bankruptcy petition having been presented against or by the debtor, and a receiving order is made against the debtor thereon, or on any other petition of which the sheriff has notice, the sheriff shall pay the balance to the Official Receiver, or, as the case may be, to the trustee, who shall be entitled to retain the same as against the execution creditor.

Note.—The fourteen days run from the date of the completion of the sale, and not from the time the purchase-money is paid (*re* Cripps and Co., *ex parte* Ross, 1888, 21 Q.B.D. 472).

Section 46 of the 1883 Act provides:—

An execution levied by seizure and sale on the goods of a debtor is not invalid by reason of its being an act of bankruptcy, and a person who purchases the goods in good faith under a sale by the sheriff shall in all cases acquire a good title to them against the trustee in bankruptcy. (See "Acts of Bankruptcy" (*e*) *supra.*)

B. *Landlord.*—A landlord as such is neither a secured nor a preferential creditor in respect of rent due to him from a bankrupt. He is an unsecured creditor, but possesses a right of distress subject to certain limitations and conditions.

Rent due from a "bankrupt" may be distrained for either before or

after bankruptcy, provided that if the distress be levied after the *commencement* of the bankruptcy it is available only for six months' rent accrued due prior to the date of the order of adjudication; but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for any surplus due, for which the distress may not have been available (1883 Act, sec. 42; 1890 Act, sec. 28; and see "*Preferential Creditors*," *infra*).

Where in order to avoid distress a trustee undertakes to treat a landlord's claim for rent as a first charge upon the proceeds of the goods which were so liable to distress, he must satisfy the landlord's claim out of such proceeds before deducting the costs of administration (*re* Chapman, *ex parte* Goodyear, 10 T.L.R.).

C. *Secured Creditors.*—A secured creditor is defined in section 168 of the Bankruptcy Act 1883 as a person holding a mortgage, charge, or lien on the property of a debtor, or any part thereof, as a security for a debt due to him from the debtor.

The holder of a bill of exchange or promissory note is not a secured creditor, such documents being mere personal engagements to pay, nor is a mere judgment creditor thereby secured, but, for the purpose of voting, the holder of a bill of exchange is under certain circumstances treated as a secured creditor (see below).

The holder of a bill of exchange may, however, be a quasi-secured creditor as the result of the rule in *ex parte* Waring, and where a holder of a bill of exchange (accepted payable against delivery of bills of lading) also holds the bills of lading, he is a secured creditor (*re* Howe, *ex parte* Brett, 1871, 6 Ch. 838).

A landlord has a right of distress, but such right does not constitute him a secured creditor.

Where a creditor holds the security of a third party he may prove for his whole debt and then resort to his security in respect of any deficiency, for he is not a person holding a charge, etc., upon the property of the debtor, but upon the property of some other person. This is termed "collateral security."

Thus, the creditor of a firm need not value a security given to him by one of the partners out of his separate estate, and *vice versa* (*ex parte* Caldicott; *re* Hart, 1884, 25 Ch.D. 716).

Petition.—If the petitioning creditor is a secured creditor he must in his petition state that he is willing either to give up his security for the benefit of the creditors in the event of the debtor being adjudged bankrupt, or give an estimate of the value of his security; and in the latter case he will be admitted as a petitioning creditor for the balance of the debt (after deducting such value) in the same manner as if he were an unsecured creditor (1883 Act, sec. 6). The creditor is not compelled to give up his security until a later stage (*i.e.* when he seeks to vote or prove in respect of his debt), and an under-valuation of same will not of itself invalidate the petition; in fact, the omission to value is a formal defect which the Court will allow to be amended.

A secured creditor is subject to special conditions as to proof of debt for the purposes of voting and dividend.

Voting.—For the purpose of voting a secured creditor must, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and he is entitled to vote only in respect of the balance (if any) due to him after deducting the value of his security. If he votes in respect of his whole

debt he shall be deemed to have surrendered his security unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence (1883 Act, 1st Schedule, Rule 10).

Dividend.—After adjudication the secured creditor must comply with one or other of the following conditions:—

(1) Rely upon his security and not prove for his debt.

(2) Surrender his security and prove for the whole debt.

(3) Surrender part of his security (if severable) and retain the remainder; and this he may either value or realise and prove for the balance of his debt (if any).

The surrender of a security places the trustee in the position of the creditor so surrendering, and does not alter the rights of prior or subsequent parties (*Cracknall* v. *Janson*, 1877, 6 Ch.D. 735).

(4) Value or realise the whole security and prove for the balance of his debt (if any) (1883 Act, 2nd Schedule, Rules 9, 10, 11).

If a secured creditor does not either realise or surrender his security, he must, before ranking for dividend, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to receive a dividend only in respect of the balance due to him after deducting the value so assessed, subject to the rules as to valuation (*ibid.* Rule 11).

With regard to the *valuation* of the security, the trustee or Official Receiver may, within twenty-eight days after a proof (involving an estimate of the value of the security) has been made use of for *voting* purposes, require the security to be given up on payment of the assessed value, with the addition thereto of 20 per centum, provided that the creditor may, at any time before he has been required to give up his security, correct his valuation and lodge a new proof, but in that case he shall not be entitled to the addition of the 20 per centum if the security is required to be redeemed (1883 Act, 1st Sch., Rule 12). After the expiration of the twenty-eight days from the first use of the proof for voting purposes (by which time the creditor is presumed to have definitely decided upon the value of the security), the trustee may *at any time* (subject to the exception below) redeem the security at its *assessed value* (*ibid.* 2nd Sch., Rule 12A).

If the trustee is dissatisfied with the valuation put upon the security (and is yet unwilling to redeem same) he may require it to be sold, and if such sale be by public auction, the creditor or the trustee on behalf of the estate may bid $\frac{\text{and}}{\text{or}}$ purchase at such sale (*ibid.* Rule 12B). Where, however, a creditor, by notice in writing, requires a trustee to decide whether he will or not redeem a security, or require it to be realised, and the trustee does not within six months after receiving such notice signify in writing his election to redeem the security or require it to be realised, then the equity of redemption or other interest in the property, previously vested in the trustee, shall vest in the creditor, and he shall be allowed to prove for the balance of his debt after deducting such assessed value (*ibid.* Rule 12C), and it makes no difference to this rule if the creditor's dividends should, with the actual value of the security as determined by subsequent events, make more than twenty shillings in the pound of the debt due to the creditor (*ibid.* Rule 17).

D. *Unsecured Creditors.*—A person whose debt has been proved and admitted is not a mere creditor. The claim ceases to give a right of action for debt, such right being replaced by one entitling the creditor to have all the assets of the estate in question applied as and when realised, *pro rata*

for the benefit of all the creditors who have proved their debts, and whose proofs have been admitted. In one sense a right of proof is wider than a right of action; for while an action can only be brought to recover a debt actually due, a right of proof extends to future and contingent debts.

DISTRIBUTION OF PROPERTY.—*Joint and Separate Estates.*—Where partners have been adjudicated bankrupt the joint estate is applicable in the first instance in payment of their joint debts, and the separate estate of each partner is applicable in the first instance in payment of his separate debts.

If there is a surplus from the separate estates it is dealt with as part of the joint estate. If there is a surplus of the joint estate it is dealt with as part of the respective separate estates in proportion to the right and interest of each partner in the joint estate (1883 Act, sec. 40, sub-sec. 3).

Priority of Payments (Costs, etc.).—The assets in every matter remaining *after payment of the actual expenses incurred in realising* any of the assets of the debtor shall, subject to any order of the Court, be liable to the following payments, which shall be made in the following order of *priority*, viz.:—

(1) The actual expenses incurred by the Official Receiver in protecting the property or assets of the debtor, or any part thereof, and any expenses or outlay incurred by him or by his authority in carrying on the business of the debtor.

(2) The fees, percentages, and charges payable under Table B of the scale of fees; and any other fees payable to, or costs, charges, and expenses incurred or authorised by, the Official Receiver.

(3) The fee which under the scale of fees for the time being in force is required to be affixed to the copy of the cash-book when forwarded for audit.

(4) The deposit or deposits lodged by the petitioning creditor.

(5) The deposit or deposits lodged on any application for the appointment of an interim receiver.

(6) The remuneration of the special manager (if any).

(7) The taxed costs of the petitioner.

Note.—The taxed costs of the petitioner's solicitor must be paid, irrespective of any question of set-off as against the petitioner.

(8) The remuneration and charges of the person (if any) appointed to assist the debtor in the preparation of his statement of affairs.

Note.—An arrangement as to the fee must be made beforehand with the Official Receiver (1883 Act, sec. 70, sub-sec. 2).

(9) Any *allowance made to the debtor* by the Official Receiver.

(10) The taxed charges of any shorthand writer appointed by the Court.

Note.—Where a shorthand writer is appointed at the instance of the Official Receiver to take notes of the examination of the debtor at his public examination, the cost of such notes shall be deemed to be an expense incurred or authorised by the Official Receiver, and be paid in priority accordingly.

(11) The trustee's necessary disbursements other than actual expenses of realisation heretofore provided for.

(12) The costs of any person properly employed by the trustee with the sanction of the committee of inspection.

Note.—These payments are subject to the regulations as to taxation (1883 Act, sec. 73, and Rule 117).

(13) Any *allowance made to the debtor* by the trustee with the sanction of the committee of inspection.

(14) The remuneration of the trustee.

Note.—This is not a taxable charge (1883 Act, sec. 73).

(15) The actual out-of-pocket expenses *necessarily* incurred by the

committee of inspection, subject to the sanction of the Board of Trade (Rule 125 of 1886).

Preferential Creditors—Act of 1888.—In the distribution of the property of a bankrupt there shall be paid in priority to all other debts:—

(*a*) All parochial and other local rates *due at the date of the receiving order*, . . . and having become due and payable within twelve months *next before* that time, and all assessed taxes, land tax, property tax, or income tax assessed on the bankrupt, . . . up to the fifth day of April next *before* the date of the receiving order, . . . *and not exceeding in the whole one year's assessment.*

(*b*) All wages or salary of any clerk or servant in respect of services *rendered* to the bankrupt . . . *during four months before* the date of the receiving order . . . but not exceeding fifty pounds; and

(*c*) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or piecework, for *services rendered during two months* before the date of the receiving order . . . provided that, where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order . . . (sec. 1, sub-sec. 1).

Subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts must be discharged forthwith, so far as the property of the debtor or the assets are sufficient to meet them; and they are to rank equally between themselves and be paid in full unless the property is, or assets are, insufficient to meet them, in which case they must abate in equal proportions between themselves (sub-secs. 2 and 3).

In the event of the landlord or other person distraining or having distrained on any goods or effects of a bankrupt . . . within *three months* before the date of the receiving order . . . the debts to which priority is given by the Act (as above stated) constitute a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof; provided that, in respect of any money paid under such charge, the landlord or other person shall have the same rights of priority as the person to whom such payment is made (sub-sec. 4).

In addition to the foregoing, priority is also given to the payment of:—

(i.) Funeral and testamentary expenses in respect of a deceased insolvent (1883 Act, sec. 125).

(ii.) Return to an apprentice or articled clerk (by way of compensation for breach of agreement) of some portion of the fee (if any) paid by him (1883 Act, sec. 41).

(iii.) Moneys in the (*ex officio*) possession of any officer of a registered society (Friendly Societies Act 1896).

(iv.) Debts due to a savings bank from any of its officers (Savings Bank Act 1891).

Dividends.—Subject to the retention of such sums as may be necessary for preferential claims and the costs of administration, or otherwise, the trustee shall, with all convenient speed, declare and distribute dividends amongst the creditors who have proved their debts.

The first dividend, if any, shall be declared and distributed within four months after the conclusion of the first meeting of the creditors, unless the trustee satisfies the committee of inspection that there is sufficient reason for postponing the declaration to a later date.

Subsequent dividends shall, in the absence of sufficient reason to the contrary, be declared and distributed at intervals of not more than six months (1883 Act, sec. 58).

In summary cases (small bankruptcies) the first dividend should be distributed within six months after the conclusion of the first meeting of creditors; but where practicable, the estate should be distributed in a single dividend when realised (Rule 273).

Not more than two months before declaring a dividend the trustee shall give notice of his intention to do so to the Board of Trade, in order that the same may forthwith be gazetted, and at the same time to such of the creditors mentioned in the bankrupt's statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall be not less than fourteen days from the date of such notice (Rule 232).

Postponed Creditors.—In the administration of the estate of a bankrupt the creditors may be roughly classified into (*a*) preferential; (*b*) secured (fully or partly); (*c*) general or unsecured; and (*d*) postponed, the latter being those who are disentitled to rank against the estate until all other creditors for valuable consideration in money or money's worth have been satisfied. The following are the chief instances of this class of creditors:—

(1) A lender of money to a person or firm under a contract in writing that he shall receive a rate of interest varying with the profits, or shall receive a share of the profits of the business (Partnership Act 1890, sec. 3).

Note.—The requirement that such a contract must be in writing is to afford proof that the lender is really not liable as a *partner*. If the contract is *not* in writing the lender would still be a postponed creditor, and would have to prove that he was not a partner in some other way (*in re* Fort, *Accountant Law Reports*, 1897).

(2) A seller of the goodwill of a business in consideration of a share of the profits (to the extent of any unpaid share of the profits) (Partnership Act 1890, sec. 3).

(3) Any money or other estate of a wife lent or entrusted by her to her husband for the *purpose of trade* or business carried on by him or otherwise, shall be treated as assets of her husband's estate in the event of his bankruptcy, and the wife is treated as a postponed creditor for the amount (Married Women's Property Act 1882, sec. 3).

Note.—It has been held that this postponement does not apply to a loan to a *firm* of which the husband is a member only (*ex parte* Nottingham, *re* Tuff, 1887, 19 Q.B.D. 88), nor to a loan to the husband for *private* purposes (*ex parte* Tidswell, 1887, 4 Mor. 219).

The claims of creditors bearing interest *exceeding* 5 per cent, when a greater rate than 5 per cent has been reserved, are also postponed as regards such excess interest to the ordinary claims in administrating a bankrupt's estate (1890 Act, sec. 23).

ARRANGEMENTS IN BANKRUPTCY.—An arrangement may be entered into between a debtor and his creditors either before or after adjudication.

The debtor must lodge his proposal for a scheme or composition, in writing, with the Official Receiver within four days after submitting the statement of affairs. The proposal must contain the terms of the composition or scheme, and state the particulars as to sureties or securities, if any.

A meeting of the creditors will then be called to consider the proposal before the close of the public examination, and if a majority in number & three-fourths in value of all the creditors *who have proved their* resolve to accept the proposal, and the Court approve, the scheme is bir a

on all the creditors. Any creditor who has proved his debt may assent to or dissent from the proposal by a letter addressed to the Official Receiver; and if received a day prior to the meeting, the letter counts as if the creditor had attended the meeting and voted.

Note that the majority mentioned above is peculiar to this clause, and the practical effect of it is, that absence from the meeting or failure to send in a voting letter on the part of a creditor who has proved his debt is equivalent to voting against the resolution. All other decisions of the creditors must be by (i.) ordinary resolution (*supra*, p. 287), or (ii.) special resolution (*infra*, p. 321).

The Court cannot approve a scheme—

(1) Where the terms of the proposal are not reasonable; or

(2) Where the scheme is not calculated to benefit the general body of creditors; or

(3) In any case in which the Court is required, where the debtor is adjudged bankrupt, to refuse his discharge.

Where any facts are proved which would justify a conditional discharge in the event of bankruptcy, the Court cannot approve a scheme unless it provides reasonable security for payment of not less than seven shillings and sixpence in the pound to the unsecured creditors (1890 Act, sec. 3).

Bankruptcy as regards—

Infants.—The liability of an infant to bankruptcy proceedings is a matter of doubt: whilst some writers suggest the possibility of an infant being liable to bankruptcy law in respect of (1) a judgment debt founded on a tort, or (2) a debt incurred for necessaries, it is settled that an infant cannot be made bankrupt in respect of debts incurred in trading, whether alone or in partnership. In the event of the bankruptcy of a firm having an infant partner, the infant will be excluded from the proceedings (Beauchamp Brothers, 1894, 1 Q.B. 1), although the whole of the partnership assets (but not the infant's separate estate) will be available for the partnership debts.

Lunatics.—It is still doubtful whether a lunatic can be made a bankrupt, but he cannot commit an act of bankruptcy involving an intent unless during a lucid interval. Where, however, the Court considered it was for the lunatic's benefit, leave was given for the committee to file a declaration of inability to pay the debts or to present a petition. But it is doubtful whether an adjudication without the consent of the Court in Lunacy is valid, and in any case such property of the lunatic as may be under the control of the Court in Lunacy will be first applied towards providing the proper maintenance of the lunatic.

For all or any of the purposes of the Bankruptcy Acts a lunatic may act by his committee (1883 Act, sec. 148), or where a person is a lunatic not so found by inquisition the Court may, on the application of a relative, friend, or other proper person, appoint such person as it may think fit to appear for, represent, or act for and in the name of the lunatic in the bankruptcy proceedings (Rule 271A).

Should the bankrupt be a lunatic or suffer from any mental affliction, the Court has power, on application being made, to dispense with the public examination of the bankrupt (1890 Act, sec. 2).

Married Women.—Every married woman carrying on a trade separately from her husband shall in respect of her separate property be subject to the bankruptcy laws in the same way as if she were a *feme sole* (Married Women's Property Act, sec. 1, sub-sec. 5).

Note.—The liability of a married woman is not a personal one—it cannot come into existence unless there is a separate estate, and it is limited to that estate. Although a judgment against a married woman is against her, execution is nevertheless limited to her separate property. It has been held that a bankruptcy notice cannot be issued upon a judgment against a married woman, although she may be trading separately from her husband and otherwise subject to the bankruptcy laws (*re* Lynes *ex parte* Lester and Co., 1893, 2 Q.B. 113).

Any money or other estate of the wife lent to or entrusted by her to her husband for the purpose of any trade or business carried on by him or otherwise shall be treated as assets of her husband's estate in case of his bankruptcy, under reservation of his wife's claim to a dividend as a creditor for the amount or value of such money or other estate after, but not before, all claims of the other creditors of the husband for valuable consideration in money or money's worth have been satisfied.

Note.—It has been held that this postponement does not apply to a loan to a firm of which the husband is a member only, nor to a loan to the husband for private purposes (see *Postponed Creditors*).

Deceased Insolvents.—Any creditor, whose debt would have been sufficient to support a bankruptcy petition had his debtor been alive, may, after the death of the latter, present a petition praying for an order for the administration of the debtor's estate, according to the law of bankruptcy. A fee stamp of £5 is payable upon every such petition. It is not necessary to prove that any act of bankruptcy was committed by the deceased in his lifetime. Such a petition may not be presented after proceedings have been commenced in any court other than the Bankruptcy Court; but upon proof of the insolvency of the estate, that other court may transfer the proceedings to the Bankruptcy Court, whether any creditor makes application for such transfer or not (1883 Act, sec. 125; and 1890 Act, sec. 21).

SMALL BANKRUPTCY.—When a petition is presented by or against a debtor, if the Court is satisfied by affidavit or otherwise, or the Official Receiver reports to the Court that the property of the debtor is not likely to exceed in value three hundred pounds, the Court may make an order that the debtor's estate be administered in a summary manner, and thereupon the provisions of the Act shall be subject to the following modifications:—

(1) If the debtor is adjudged bankrupt the Official Receiver shall be the trustee in bankruptcy.

(2) There shall be no committee of inspection, but the Official Receiver may do, with the permission of the Board of Trade, all things which may be done by the trustee with the permission of the committee of inspection.

(3) Such other modifications may be made in the provisions of the Act as may be prescribed by general rules with the view of saving expense and simplifying procedure; but nothing in this section shall permit the modification of the provisions of the Act relating to the examination or discharge of the debtor.

Provided that the creditors may at any time, by special resolution, resolve that some person other than the Official Receiver be appointed trustee in the bankruptcy, and thereupon the bankruptcy shall proceed as if an order for summary administration had not been made (1883 Act, sec. 121).

Note.—A special resolution is a resolution decided by a majority in number and three-fourths in value of the creditors present, personally or by proxy, at a meeting of the creditors and voting on the resolution.

ADMINISTRATION ORDER.—Where a judgment has been obtained in a

County Court and the debtor is unable to pay the amount forthwith, and alleges that his whole indebtedness amounts to a sum not exceeding fifty pounds, inclusive of the debt for which the judgment is obtained, the County Court may make an order providing for the administration of his estate, and for the payment of his debts by instalments or otherwise, and either in full or to such extent as to the County Court under the circumstances of the case appears practicable, and subject to any conditions as to his future earnings or income which the Court may think just (1883 Act, sec. 122).

Deeds of Arrangement

A deed of arrangement, or private arrangement made between a debtor and his creditors, is one whereby those creditors who may assent to it, in consideration of each other's assent, accept either—

(1) An assignment of the debtor's property;
(2) A stated composition; or
(3) Payment in full by instalments in discharge of their respective debts, either absolutely or upon stated conditions.

The Companies Act 1862 (sec. 164) provides "that any conveyance or assignment made by any company formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents."

The Deeds of Arrangement Act 1887, which does not apply to Scotland, defines a deed of arrangement for the purposes of that Act as including "any of the following instruments, whether under seal or not, made by, for, or in respect of the affairs of a debtor for the benefit of his creditors generally (otherwise than in pursuance of the law for the time being in force relating to bankruptcy), that is to say—

"(*a*) An assignment of property.
"(*b*) A deed of or agreement for a composition.
"And in cases where creditors of a debtor obtain any control over his property or business—
"(*c*) A deed of inspectorship entered into for the purpose of carrying on or winding up a business.
"(*d*) A letter of licence, authorising the debtor or any other person to manage, carry on, realise, or dispose of a business with a view to the payment of debts.
"(*e*) Any agreement or instrument entered into for the purpose of carrying on or winding up the debtor's business, or authorising the debtor or any other person to manage, carry on, realise, or dispose of the debtor's business, with a view to the payment of his debts."

Note.—The term "creditors generally" includes all creditors who may assent to, or take the benefit of, a deed of arrangement.

Every such deed as defined above is void unless registered with the Registrar of Bills of Sale within seven clear days after the first execution thereof by the debtor or any creditor. An extension of time is allowed in respect of deeds executed out of England or Ireland. A deed of assignment may be registered before being executed by the trustee, and where a deed was executed by the debtor, the trustee and one creditor only before registration and was subsequently executed by other creditors, this fact was held not to be such an alteration of the deed as to vitiate its registration (*ex parte* Milne *re* Batten, 1889, 22 Q.B.D. 685). The "deed" must be stamped with

the proper inland revenue duty (10s. if under seal), and in addition a stamp denoting a duty of one shilling per £100 or fraction of £100 of the sworn value of the property passing, or (where no property passes under the deed) the amount of composition payable thereunder. The stamps must be affixed before production of the deed to the Registrar. There is also an *ad valorem* "filing duty" of £1 per £1000 or fraction thereof (with a maximum of £5 duty), payable upon the value of the property passing or the amount of composition payable under the deed, as the case may be. Where an *ad valorem* fee cannot be applied, a fixed fee of £2 is payable.

The registration is effected as follows:—A true copy of the deed, and of every schedule or inventory thereto annexed or therein referred to, must be presented to the Registrar and filed within seven clear days after execution, together with an affidavit verifying the time of execution, and containing a description of the residence and occupation of the debtor, and the place or places where his business is carried on, and an affidavit by the debtor stating the total estimated amount of property and liabilities included under the deed, the total amount of composition (if any) payable thereunder, and the names and addresses of his creditors. Although the execution of the deed by either the trustee or any creditor is permissible after registration, great care must be taken with regard to the schedule of creditors' names and addresses attached to the affidavit. In *Aldous* v. *Foord* (Philips, claimant), 1899, 108 L. T. 278, it was shown that to a large extent the names and addresses of creditors were omitted, and that of the addresses given many were inadequate and useless, and it was held that substantial compliance had not been made with the requirements of section 6 of the Act of 1887, and that the registration was, in consequence, invalid, and the deed void, and a creditor having levied execution was entitled to the goods as against the trustee under the deed. The register is open to public inspection upon payment of the prescribed fee, viz.:—

For searching the register (*i.e.* for every name inspected), and on inspecting the filed copy of the deed, including the extracts allowed by the rules, the fee of 2s. 6d.

The extracts are limited to the date of execution and registration, the names, addresses, and descriptions of the parties to the deed, and a short statement of the nature and effect of the deed.

A deed of arrangement, as already stated, is void if not registered in accordance with the Act of 1887, and section 17 provides that, "nothing in this Act shall be construed to repeal or shall affect any provision of the law for the time being in force in relation to bankruptcy, or shall give validity to any deed or instrument which by law is an act of bankruptcy or void or voidable." So that such a deed may be avoided notwithstanding registration—

(1) If it contravenes the provisions of 13 Eliz. chap. 5, relating to frauds upon creditors; or

(2) By an order of adjudication being made against the debtor upon a petition presented within three months after the date of the deed.

(*a*) *Deed of Assignment*

A deed by which a debtor assigns his property, real and personal, land, houses, furniture, stock-in-trade, book debts, etc., to a trustee, in trust to realise same, and after payment of the expenses to distribute the balance *pari passu* amongst the assenting creditors, who in consideration of (1) the

assignment, and (2) the dividends received (if any), mutually forbear in respect of, and release the debtor (either absolutely or subject to conditions) from the debts respectively owing to them. In the absence of any provision in the deed as to any surplus remaining after paying the costs and all claims in full, the balance strictly belongs to the creditors, for there is no resulting trust implied in favour of the debtor (*Smith* v. *Cooke*, 1891, A.C. 297).

Although deeds are usually employed, it is not absolutely essential to the validity of an assignment of personal property that it be under seal. It is customary to exclude from the deed any leasehold property of the debtor, particularly where it is subject to onerous covenants, the deed, however, generally expressing "that the debtor shall stand possessed of all leasehold property to which he is now entitled upon trust for the trustee and the creditors," and further declaring that the debtor "shall assign and dispose of the same and any income arising therefrom in such manner as the trustee shall from time to time direct," the net proceeds of every such disposition being payable to the trustee, who must then apply the same in accordance with the provisions of the deed. This is done because the trustee has no power of disclaimer (as possessed by a trustee in bankruptcy), and should the leaseholds vest in the trustee he would be personally liable for the rent and covenants thereof whilst he continued to hold the property.

Where, however, the deed comprises "lands, messuages, tenements, and hereditaments, corporeal or incorporeal, of any tenure," it should not only be registered under the Deeds of Arrangement Act 1887, but also under the Land Charges Registration, etc., Act 1888, which provides that every deed of arrangement shall be void as against a purchaser for value of any land comprised therein or affected thereby, unless and until such deed is registered at the office of Land Registry and Deeds of Arrangement. The deed may be so registered upon the application of the trustee under the deed or an assenting creditor. The effect of non-registration is that a purchaser of the land for value (with or without notice of the deed) would be entitled to the land as against the trustee and the creditors.

The method of administering the estate, and of its realisation and distribution, is invariably detailed in the deed itself, the bankruptcy procedure being, however, as a rule adopted.

If the benefits of a life policy have been assigned as part of the debtor's estate, care should be taken to notify the insurance company, and where necessary to obtain the special form of assignment required by the particular company. Where any of the property is subject to the risk of fire or burglary (*i.e.* a jeweller's stock-in-trade), steps should be taken to insure against same, or if already insured against, to have the policies duly endorsed by the company in favour of the trustee. The trustee should also give express notice of the deed to all debtors in respect of any book debts assigned, because, of course, he cannot take legal proceedings to recover such debts until he has done so, and the mere fact that the trustee has made a fruitless written demand for the money due is not sufficient notice. The deed of assignment must be expressly referred to in some written communication, otherwise the trustee will fail to obtain judgment.

A conveyance or assignment by a debtor of his property to a trustee for the benefit of his "creditors generally" constitutes an act of bankruptcy, and is available to creditors for the presentation of a bankruptcy petition within three months after the date of the deed; and this is so even where the deed is not stamped or registered (*re* Hollinshead *ex parte* Heapy, 1889, 58 L.J.Q.B. 297).

But a creditor who has assented to such an assignment cannot take

advantage of it as an act of bankruptcy (*ex parte* Stray, 1867, 2 Ch. 374), unless he has been induced to assent by misrepresentation, or some fraud has been practised upon him in connection therewith. Nor can a creditor, who has assented to the assignment, sue the debtor. On the other hand, a creditor who has not assented thereto can sue the debtor; but if the deed has become *irrevocable*, he has no remedy against the property assigned except by bankruptcy procedure.

To render a deed of assignment irrevocable and a protection against an execution creditor at least one other creditor should have assented (either in writing or verbally) to the deed. One reason for this is that a creditor by assenting to the deed also delays taking legal proceedings against the debtor's property, and it would be unfair to him to allow another creditor to do so (*Harland* v. *Binks*, 1851, 15 Q.B. 713).

An assenting creditor has the ordinary rights of a *cestui que trust*, but a non-assenting creditor has no remedy against the trustee for non-performance of his duties under the deed. As to what amounts to assent by a creditor, see below.

A trustee under a deed of assignment cannot safely deal with or distribute the estate of the debtor until after the expiration of three months from the date of the deed, unless he is certain that all the creditors have assented to the deed, or, at all events, that the debts of the dissenters are insufficient in the aggregate to support the presentation of a bankruptcy petition. For if a receiving order is made against the debtor upon a petition presented within three months of the date of the deed and adjudication ensue, the title of the trustee in bankruptcy will relate back to the earliest act of bankruptcy committed by the debtor within the three months next preceding the presentation of the petition. This necessarily will include the property comprised in the deed of assignment, and upon bankruptcy ensuing the position of the trustee under the deed will be—

(1) He may be treated as a trespasser, and the trustee in bankruptcy can claim the property unconverted, and the *value* of such as may have been converted—*not* an account of moneys received in respect of dealings with the property;

Or (2) He may be treated as an agent, and the trustee in bankruptcy may call for an account as between principal and agent of the moneys received, or which ought to have been received, under the deed (*ex parte* Vaughan *re* Riddeough, 1884, 14 Q.B.D. 25).

The trustee in bankruptcy must, however, make his election; he cannot treat the trustee under the deed as both a trespasser and an agent.

In accounting for his dealings, the trustee under the deed is entitled to all "proper allowances"; but with regard to his remuneration he is in an unenviable position. Under ordinary circumstances a trustee under a deed of arrangement which is avoided by subsequent bankruptcy proceedings cannot recover or retain (as the case may be) anything in respect of his remuneration for acting under the avoided deed, even though the latter document makes provision for same. (*Note.*—Provision should be made in the deed for the remuneration of the trustee, otherwise some difficulty might arise in respect thereof, whether bankruptcy ensued or not.)

In exceptional cases, however, allowances have been made by the Court out of the bankrupt's estate, for services rendered thereto by a trustee under an abortive deed, where the estate has clearly benefited by such services. The Court made a small allowance in the case of *re* Foster

ex parte the Official Receiver (1895, 72 L.T. 364) although the Official Receiver had refused to do so.

The trustee may, however, protect himself not only as regards his remuneration, but in respect of liability for (*a*) carrying on the business of the debtor, (*b*) realising the estate, and (*c*) distributing same, by obtaining from the creditors or some of them, or a committee of inspection appointed by them or by the deed, an indemnity in respect of any such liabilities, responsibilities, or losses to which he may consider himself subjected by virtue of his office as trustee under the deed. But the trustee has a right of indemnity against the trust assets for any personal liabilities incurred by him in connection with the administration of the trust, and the creditors to whom the trustee has made himself liable can (*but only through the trustee's indemnity*) obtain payment of their debts out of the trust assets in priority to the claims of the creditors who have assented to the deed. In the event of an assignment being set aside by bankruptcy proceedings, the Board of Trade have a right to object to the trustee under the assignment being appointed as trustee in the bankruptcy, for the former has become an accounting party to the latter (*re Martin*, 1888, 21 Q.B.D. 29).

(*b*) *Deed of Composition*

This is an arrangement whereby creditors agree to release and discharge a debtor from the claims they have against him in consideration of receiving a certain composition thereon, payable at a stated time or in stated instalments, in money or bills, with or without a surety, or sureties, the creditors further covenanting not to sue the debtor unless and until he makes default in the terms or one of the terms of the arrangement. Although the general rule is that a liquidated and undisputed debt cannot, even with the consent of the creditor, be discharged by the payment of a smaller sum by the debtor in the same way in which he was bound to pay the whole sum (unless, of course, the consent of the creditor be under seal), an arrangement for a composition made with more than one creditor is valid (apart from the provisions of the Act of 1887 as to registration), even though not under seal, for the composition payable is supplemented by further consideration, viz. mutual forbearance, each creditor taking a composition in full discharge in consideration of the other creditors doing the same.

The creditors of a person may, however, absolutely assign their respective debts to a nominee of the debtor in consideration of an agreed composition, thus conferring a right upon such nominee to sue the debtor for the "face value" of the claims. But the assignee may be a person selected solely on account of the debtor's confidence in his nominee's forbearance. Such right to sue being therefore nominal, several assignments have the effect of giving the debtor a discharge from his creditors generally in consideration of a composition, without recourse to a document requiring registration under the Act of 1887.

A deed of composition must be based upon good faith between the debtor and his creditors, and also between the creditors themselves. In particular, any *secret* bargain to give any creditor or creditors an advantage over the others will avoid the whole arrangement (*ex parte Milner*, 1885, 15 Q.B.D. 605). Nor will a person who has assented to a deed of composition be bound thereby if the assent was given on the faith that other creditors would also join, and the latter do not assent (*Reay* v. *Richardson*, 1835, 2 C.M. and R. 422). A composition arrangement is

not of itself an act of bankruptcy, nor need the document necessarily contain such a notice of suspension of payment as would amount to an act of bankruptcy, but in practice it will be found difficult to avoid the formal announcement to the creditors, or one of them, that the debtor "has suspended, or that he is about to suspend, payment of his debts."

Creditors generally agree to release their debtor upon *payment* of the stated composition—that is, upon the performance of the covenants and not upon the debtor's promise, and in such cases upon the failure of the debtor to carry out the covenants, which were made a condition precedent to his obtaining his release, the unpaid portions of the original debts revive with their attendant rights and remedies. Where, however, an arrangement is made to accept the new agreement in discharge of the old debts, these debts would be released upon the promise of the debtor, and upon default in the performance the old debts would not revive, and the creditors' only remedy would be for and in respect of the new debts, viz. the amounts of composition respectively payable under the deed. This state of things, however, is hardly ever allowed—certainly not with intention. Where promissory notes are given for the amounts of composition payable, and the deed is properly drawn, the release by the creditor is made conditional upon the payment of the notes, as and when they mature, so that if the debtor makes default in meeting the notes, the old debts revive with the original rights and remedies—the arrangement thereby falling through.

Where, as is often the case, the promissory notes for the amount of the last instalment of a composition are signed by a surety, the position on default is this: the debtor is liable for the whole amount of the original debts remaining unpaid, but the surety is not concerned therewith; the latter is, however, still liable to the extent of the notes he has signed. The creditors upon default may therefore sue the debtor upon the respective balances of their original debts, and sue the surety upon the notes for such portion only as they are unable to recover from the debtor, limited, of course, to the amount of the notes in each case.

(*c*) *Deed of Inspectorship*

A *Deed of Inspectorship* is one used in conjunction with either a prospective assignment or a composition where it is desirable to carry on the business of the debtor, $\frac{\text{and}}{\text{or}}$ gradually wind up the same under the supervision of a committee of inspection selected from the creditors.

(*d*) *Letter of Licence*

A *Letter of Licence* is an instrument of arrangement whereby the creditors agree to give time to the debtor, and forbear to sue for a stated period in order that he may retrieve his position. Creditors, by assenting to such an arrangement as this, do not necessarily release any portion of their debts, nor does the entering into same constitute an act of bankruptcy on the part of the debtor.

Creditors' Assent.—A private arrangement between a debtor and his creditors is only binding upon, and for the advantage of, those creditors who assent thereto. The best possible evidence of assent is the creditor's signature to the deed itself, but it is not essential that the assent be proved in this way. Creditors may assent to a deed of arrangement in a separate

writing, or even verbally or by conduct. It is not safe, however, to rely upon a verbal assent, because of the difficulty of proof. The rule in the case of a composition is that where a creditor verbally agrees with other creditors to accept the composition he cannot afterwards refuse to do so, for having held himself out to other creditors as assenting, it would amount to a fraud upon the latter to allow him to withdraw, the consideration for the assent of the other creditors being "mutuality of assent."

As already stated, a creditor cannot set up as an act of bankruptcy an assignment or other arrangement to which he has assented or been privy, and a creditor who had presented a bankruptcy petition on the grounds of "notice of suspension of payment" and the execution of a deed of assignment was (ultimately) unsuccessful, the Divisional Court, on appeal, deciding that as the petitioning creditor had attended a meeting of creditors which involved an act or acts of bankruptcy, and at which a proposal for an assignment was considered and agreed to, he must be deemed to have acquiesced in the deed, although he did not expressly assent, if being present he did not dissent at the time the proposal was put to the meeting (*ex parte* Crossland, Accountant Law Reports, 1897, p. 125).

A more recent case on this point is that *re* Carr *ex parte* Jacobs (25 C.C.C. Rep. 304, 85 L.T. Rep. 552), in which it was decided by the Divisional Court that a creditor having notice of the deed is not bound to express his dissent therefrom, but if, without having done so, he delays presenting a bankruptcy petition until more than two months from the time he has notice of the deed, and does not explain the delay, he will be deemed to have assented thereto, and his petition will be dismissed although the statutory period of three months may not have elapsed.

In practice, where the deed itself cannot be presented to the various creditors, an epitome of its contents is in some cases prepared, and printed copies thereof together with "forms of assent" issued to each of the creditors for their signatures. In the majority of cases, however, the usual contents of a deed of arrangement being well known, a "form of assent" only is issued to the creditors.

A trustee should require proof of any creditor's claim which may be considered doubtful, before such creditor has been allowed to execute a deed of arrangement, for, apart from fraud, the trustee cannot afterwards exclude such creditor's claim (*Lancaster* v. *Else*, 31 Beav. 325).

Creditors whose claims are guaranteed by a third party, *i.e.* a surety, should require a clause in the deed itself reserving their rights against the surety, or else obtain the permission of the surety before assenting to a deed of arrangement, for although in bankruptcy it is expressly provided that sureties are not discharged—the payment of a dividend and the discharge of the debtor being a legal result—this does not apply in the case of a private arrangement, which is an act of the parties themselves. To assent to a private arrangement without such permission or reservation of rights would operate as a release of the surety. Where a deed of arrangement is set aside by bankruptcy proceedings, the creditors are not bound by any release they may have given in the deed, but may prove in the bankruptcy for the whole of the unpaid balances of their respective debts (*re* Stephenson *ex parte* Official Receiver, 1888, 20 Q.B.D. 540).

Accounts.—Every trustee under any deed of arrangement as defined by the Deeds of Arrangement Act 1887, must within thirty days of the first day of January in each year transmit to the Board of Trade an account of his receipts and payments as such trustee.

Where the trustee has either—

(1) Realised all the property included in the deed of arrangement, or so much as can probably be realised, and made a final distribution of dividend or composition; or

(2) Fulfilled all the trusts and obligations in any other way, he must transmit with his final account an affidavit to that effect, and no further accounts will be required from him (Rule 16).

Where the Board of Trade consider the accounts incomplete, or that they require amending or explaining, they may make such requisitions upon the trustee thereupon as they may think necessary (Rule 14).

The accounts transmitted to the Board of Trade may be inspected by any creditor upon payment of one shilling, and the Board of Trade will supply copies thereof or extracts therefrom to any creditor upon payment of fourpence per folio of seventy-two words or figures.

A trustee under a deed of arrangement is not required, like trustees in bankruptcy and liquidators in voluntary windings-up, to pay over undistributed balances and unclaimed dividends to the Bank of England. Many trustees, desiring to obtain a complete discharge from their trust, have voluntarily offered to pay over unclaimed dividends to the Bankruptcy Estates Account, but the Board of Trade have no power to accept them, and they accordingly remain in the hands or under the control of the trustees.

SIDNEY S. DAWSON.

Bankruptcy (Scotland).—Under this head will be considered—1. Insolvency; 2. Notour Bankruptcy; 3. Processes for Distribution of Bankrupt Estates, viz. Sequestration, Cessio, and Trust Deeds for Creditors; 4. Composition Contracts; and, 5. Fraudulent Bankruptcy.

1. INSOLVENCY

Insolvency is the condition of inability to pay one's debts. The most general principle of bankruptcy law is that an insolvent debtor falls to be regarded as holding his property not at his own free will and disposal, but in trust for his creditors, in order to the just division of it amongst them so far as it will go in payment of their claims. From this it follows, in the first place, that an insolvent is not entitled to alienate his property gratuitously, so as to diminish the fund available to meet his debts. Restraint upon his action in this respect is imposed both by the common law and by statute.

(1) GRATUITOUS ALIENATIONS AT COMMON LAW.—Every form of gratuitous alienation is struck at, whether by writing, transfer of moveables, or otherwise, and whether direct or indirect. For example, where an insolvent debtor expended large sums in improving a mansion-house held by his marriage-contract trustees, it was held that his trustee in sequestration was entitled to claim the benefit of the expenditure (Main, 1881, 8 R. 880). Actual fraudulent intent on the debtor's part is not necessary, nor fraud of the recipient. The burden of proving the gratuitous nature of the transaction lies on the challenger. Good consideration may be money or money's worth, or a prior legal obligation on the debtor's part (see Broadfoot, 9th December 1808, F.C.; Horne, 1847, 9 D. 651; M'Cowan, 1853, 15 D. 494; Taylor, 15 R. 328.) Marriage forms a good legal consideration for a reasonable provision by a husband in an ante-nuptial contract executed during insolvency in the absence of collusion. A post-nuptial provision to take effect during marriage is invalid as a donation. It is not clearly

settled whether a reasonable post-nuptial provision to take effect after the husband's death would be sustained. Policies of assurance for benefit of wife or children are specially regulated by statute 43 & 44 Vict. c. 26. The debtor's insolvency must have continued down to the time of the challenge, and be absolute insolvency, that is, a deficiency of total assets compared with total liabilities. Any onerous creditor may make the challenge, whether his debt was contracted before or after the transaction in question. As to the form of challenge, see Goudy on *Bankruptcy*, 37.

(2) GRATUITOUS ALIENATIONS UNDER 1621, C. 18.—The Act 1621, c. 18, strikes at all alienations by insolvent debtors "to any conjunct or confident person without true, just, and necessary cause, and without a just price truly paid." The scope of the Act is more limited than the common law as regards the character of the recipient of the alienation, and the class of creditors entitled to plead it; but within its range it is a more potent instrument of challenge, as the challenger is allowed the benefit of certain presumptions. If it be admitted or proved that the grantee is a conjunct or confident person, and that the debtor is presently insolvent, there is presumed in favour of the challenger—(1) insolvency of the grantor at the date of the alienation; (2) want of consideration. The onus is thrown on the defender of rebutting these presumptions. It has been generally considered that the Act applies only to transferences by writing (see Stair, i. 9, 15; Erskine, i. 4, 29; Bell's *Com.* ii. 174). But this point is not clearly determined by decision. Apart from this distinction, every form of alienation falls within the scope of the Act, *e.g.* the discharge of a debt or the abandonment of defences to an action, but not, it would seem, a mere acknowledgment or voucher for a debt truly due, as distinguished from a bond, etc., on which diligence may be used, and an advantage thereby gained by the grantee over other creditors (Thomas, 1865, 3 M. 1160; Matthew's Trs. 1867, 5 M. 957). The term "conjunct" includes parents and children, brothers and sisters, uncles and aunts, nephews and nieces, parents and children and brothers and sisters by affinity, but not uncle and nephew by affinity. It is not decided whether a cousin is conjunct. "Confident" does not imply relationship, but "intimate and confidential intercourse," and includes, *e.g.*, partners, servants, factors, and confidential men of business.

The terms of the deed are not in themselves sufficient to establish onerosity, and proof of onerosity may be by parol evidence. Value in money or money's worth must be fairly adequate in amount, and must have been really paid. It is sufficient to elide the Act if the deed is granted to fulfil a previously existing legal obligation of the debtor, either by way of specific implement or of satisfaction, or by way of security. Marriage is a "just cause" in the sense of the Act, so as to protect provisions by ante-nuptial contract to wife or issue so far as reasonable in amount (Bell's *Com.* ii. 176, 177; Carphin, 1867, 5 M. 797; Watson, 1874, 1 R. 882). It is not clearly settled how far the natural obligation of a husband will support a post-nuptial settlement in favour of his wife to operate after death. Post-nuptial provisions to children are not protected.

There must be insolvency at the date of the alienation in the sense of an absolute deficiency of assets to meet liabilities. The right of challenge under the Act belongs to any prior creditor. It may be exercised by a trustee in sequestration (Bankruptcy Act 1856, sec. 11), but not by the debtor in his own right, nor by a trustee under a private trust deed, unless the trust deed empowers him to challenge, and creditors having a title to challenge accede to it. Where a gratuitous alienation is successfully

challenged by an individual creditor, the effect is simply to restore the subject to the position in which it was before the alienation, so that it may then be attached by diligence of the pursuer or any other prior creditors. Where the challenge is by a trustee in sequestration, he is entitled to demand delivery of the subject of the alienation.

The Act 1621, c. 18, in its second part, strikes at any voluntary payment or right made or granted during insolvency in defraud of diligence of creditors already begun, and whether in favour of conjunct or confident persons, or of strangers. The alienation must have been granted voluntarily, and not under pressure of legal diligence. The insolvency must be notorious, and not secret and unknown to the grantee. The title to challenge is in creditors who, prior to the alienation, have begun to use legal diligence which if not interrupted would have affected the subject of the alienation. The diligence must be regular and formal, and be prosecuted in due course and without improper delay. A trust disposition for behoof of all the creditors of the grantor may be set aside under the Act (Grant, 1835, 13 S. 424; Mackenzie, 1868, 6 M. 833). The facilities which exist under the present law for constituting notour bankruptcy make this branch of the statute of comparatively little importance, and it is rarely now called into requisition.

FRAUDULENT PREFERENCES BY AN INSOLVENT DEBTOR.—The common law, in addition to prohibiting gratuitous alienations, also restrains an insolvent to a certain extent from giving fraudulent preferences to favoured creditors. Subject to the exceptions undernoted, every kind of transaction by which a benefit is given to one creditor in preference to others is open to challenge. Actual fraudulent intent on the part of the debtor is not required. Fraud is presumed if the preference is granted voluntarily, while he is insolvent and conscious of his insolvency. Collusion on the part of the creditor does not seem to be required (M'Cowan, 1852, 14 D. 968, and 1853, 15 D. 494).

Exceptions.—(*a*) *Payments in cash* are not challengeable even though the debtor and creditor are both aware of the insolvency, but the payment may be bad if anticipatory, or the result of fraudulent contrivance between the parties. (*b*) *Transactions in course of trade.*—Fulfilment of obligations if done in the fair and ordinary course of trade is not struck at (Bell's *Com.* ii. 228; see under Act 1696, c. 5, *infra*). (*c*) *Nova debita.*—These are alienations in specific implement of obligations under onerous contracts, where the obligations *hinc inde* have been undertaken *unico contextu*, *e.g.* delivery of goods under a contract of sale, or granting security for a loan specifically agreed to be given when the loan was granted.

The right of challenging fraudulent preferences at common law extends, it is thought, to posterior as well as prior creditors, but this has not been definitely decided.

2. NOTOUR BANKRUPTCY

Notour bankruptcy is a state of insolvency which has attained publicity, as evidenced by a definite statutory *indicia*. It has important effects in restraining the debtor's power of dealing with his property, as well as his creditors' rights in acquiring preferences by diligence, and it further renders the debtor liable to divestiture of his estate for distribution among his creditors. Notour bankruptcy, in modern law, was introduced by the Act 1696, c. 5. The existing law as to the conditions under which the state of notour bankruptcy arises is contained in the Bankruptcy Act 1856, sec. 7, and the

Debtors Act 1880 (43 & 44 Vict. c. 34), sec. 6. The most important of these provisions in modern practice is that contained in the last-mentioned Act. The Debtors Act abolished imprisonment for debt in the case of ordinary civil debtors, and at the same time introduced a new and simple mode of constituting notour bankruptcy without the necessity of executing diligence either against the person or property of the debtor. It provides that in any case in which under the provisions of the Act imprisonment is rendered incompetent, "notour bankruptcy shall be constituted by insolvency concurring with a duly executed charge for payment followed by the expiry of the days of charge without payment, or where a charge is not necessary or not competent, by insolvency concurring with an extracted decree for payment followed by the lapse of the days intervening prior to execution without payment having been made." This mode of constituting notour bankruptcy has become almost all but universal in practice in the case of ordinary civil debtors. The insolvency required by the statute is practical insolvency, in the sense of present inability to pay a debt (M'Nab, 1889, 16 R. 610). When the other requisites of the statute are present, there is *prima facie* evidence of insolvency warranting application for sequestration or cessio, but this may be rebutted by proof of solvency adduced in such an application or under a petition for recall of sequestration, etc. The class of debtors to which this mode of constituting notour bankruptcy applies embraces all debtors rendered exempt from imprisonment by the Debtors Act 1880, and also alimentary debtors. It does not include debtors who were exempt from imprisonment under the law prior to the Debtors Act, or debtors for taxes, fines, or penalties due to His Majesty, or rates or assessments lawfully imposed or to be imposed. The other modes of constituting notour bankruptcy applicable to the first-mentioned class are—(1) sequestration, or the issuing of an adjudication in bankruptcy in England or Ireland; (2) insolvency concurring with sale of any effects belonging to the debtor under a sequestration for rent, or with his making application for the benefit of *cessio bonorum*.

The class of debtors who were exempt from imprisonment prior to the Debtors Act 1880 includes *inter alios* pupils, lunatics, peers, Members of Parliament during the sittings of the House of Commons and for 40 days prior and subsequent thereto, debtors in ordinary debts under £8 : 6 : 8, married women, corporations, and public companies. Debtors of this class may be rendered notour bankrupt by—(1) sequestration, or the issuing of an adjudication of bankruptcy in England or Ireland; (2) insolvency concurring with sale of any effects belonging to the debtor under a poinding or a sequestration for rent, or with his making application for the benefit of *cessio bonorum*; (3) insolvency concurring with a duly executed charge for payment, followed by (*a*) execution of arrestment of any of the debtor's effects not loosed or discharged for 15 days, or (*b*) execution of poinding of any of his moveables, or (*c*) decree of adjudication of any part of his heritable estate for payment or in security (Bankruptcy Act 1856, sec. 7).

Debtors still subject to imprisonment may be made notour bankrupt by (1) sequestration, or the issuing of adjudication of bankruptcy in England or Ireland; (2) insolvency concurring with a duly executed charge for payment, followed by imprisonment or formal and regular apprehension of the debtor, or by his flight or absconding from diligence, or retreat to the sanctuary, or forcible defending of his person against diligence; (3) insolvency concurring with sale of any effects belonging to the debtor under a poinding or sequestration for rent, or with his retiring to the sanctuary

for 24 hours, or his making application for the benefit of *cessio bonorum* (Bankruptcy Act 1856, sec. 7).

Private Partnerships may be rendered notour bankrupt either (1) in the mode prescribed in the Debtors Act 1880 by proceedings against a partner for a company debt; or (2) in any of the other modes specified above as applicable to ordinary civil debtors; or (3) where the debt is for taxes, etc., due to the Crown, or rates, in the modes specified as applicable to debtors subject to imprisonment.

Unincorporated Associations, such as clubs, cannot be made notour bankrupt, nor can railway companies.

The Bankruptcy Act 1856 enacts that "notour bankruptcy shall be held to commence at the time when its several requisites concur," and that it shall continue "in the case of sequestration until the debtor shall obtain his discharge, and in other cases until insolvency cease, without prejudice to notour bankruptcy being anew constituted within such period."

Notour bankruptcy has certain effects in equalising diligences. It is provided by section 12 of the Bankruptcy Act 1856 that "arrestments and poindings which shall have been used within sixty days prior to the constitution of notour bankruptcy, or within four months thereafter, shall be ranked *pari passu* as if they had all been used of the same date." The statutory period falls to be computed according to the rule given in the 5th section of the Act, which provides that "periods of time in this Act shall be reckoned exclusive of the day from which such period is directed to run." In order to obtain the benefit of the *pari passu* ranking within the statutory period, it is not essential that diligence be actually executed, it being provided (sec. 12) that "any creditor judicially producing in a process relative to the subject of such arrestment or poinding [*e.g.* a multiplepoinding or furthcoming] liquid grounds of debt or decree of payment within such period shall be entitled to rank as if he had executed an arrestment or a poinding."

CHALLENGE OF PREFERENCES UNDER ACT 1696, C. 5.—The Act strikes at preferences granted by a debtor to any of his creditors at or after his becoming notour bankrupt, or within the space of sixty days prior thereto. In computing the sixty days, either the day of bankruptcy, counting from it, is not reckoned, or the day of giving the preference, counting from it; but in either case the sixty days are held to have expired the moment the sixtieth day has begun. Thus where notour bankruptcy was constituted on 30th May, a preference given on 31st March was held beyond the sixty days (Blaikie, 21st January 1809, F.C.).

In challenges under the Act it is not necessary to prove actual *animus fraudandi* on the part of the bankrupt, nor collusion on the part of the creditor.

Subject to the exceptions undernoted, the scope of the Act is not limited by the form of the preference given. It may be by direct transference of moveable or heritable estate, the indorsation of a bill or cheque, the discharge of a debt, the abandonment of a competent defence to an action, the prepayment of a debt, selling property to a third party on an agreement for handing the price to the favoured creditor, selling goods to a creditor in order that he may plead compensation on the price, or granting security to a third party who arranges to undertake liability as cautioner for the favoured creditor's debt. A trust deed for creditors may be reduced by a non-acceding creditor if granted within the statutory period. A mere voucher of debt founding a claim to an ordinary ranking is not struck at; but where a bill of acceptance was used by a creditor to obtain a preference by

competing in a poinding, it was held liable to challenge. The transaction challenged must have been granted to a creditor for an existing debt. It must further have been granted voluntarily and in satisfaction or further security; *i.e.* not by way of giving specific implement of a matured debt, but of giving some surrogatum or security therefor.

Exceptions.—(1) *Cash Payments.*—Payments in cash of money obligations presently due have always been regarded as outwith the scope of the Act. "A man though he knows that he is insolvent and cannot pay all his creditors, may, nevertheless, prefer any of them whom he pleases and pay their debts in full, provided their debts are due, and due in actual money. He is at liberty to do this, though he is not at liberty to give them any pledge in security of their debts" (*per* Lord Young in Coutts' Tr. 1886, 13 R. 1112). Cash payments include payments by bank-notes, cheques by the debtor (as distinguished from indorsements), bank drafts and bills, Exchequer and Navy bills, and other mercantile paper which is commonly paid and received as cash; but payments by bill or indorsement of cheques are not protected unless made in the ordinary course of trade. (2) *Transactions in the ordinary course of trade.*—It is not possible to give a precise definition of the transactions falling under this exception. The general distinction is between the continuation of ordinary business dealings and the taking of extraordinary measures to satisfy creditors whose claims a debtor is unable to meet in the ordinary course. Thus where a manufacturer who held bills granted by customers indorsed these over to a creditor in payment of his claim, and the transaction was defended as being in accordance with the bankrupt's business practice during several years, but which practice was itself the outcome of financial embarrassment, the indorsement of the bills was held to be out of the ordinary course of business dealing (Horsbrugh, 1885, 12 R. 1171). On the other hand, deliveries of goods in implement of prior contracts in ordinary course are not struck at, even though a long period may have intervened. And where a bill is due at a bank and the debtor takes it up by sending to the bank to be discounted another bill for the amount, the Act has been held not to apply (Bell's *Com.* ii. 204), and payments by indorsation of bills in the ordinary course of a running account between a bank and its customer, or between merchants, or a principal and agent, will be effectual (*ibid.*). Where a payment is anticipatory and therefore not in ordinary course, it will not be entitled to the benefit of the present exception. (3) *Nova debita.*—These are transactions in which the alienation by the bankrupt is granted in specific implement of an obligation undertaken for a fair and present value given. The simplest instances are sales for a fair price paid, or loans upon specific security instantly granted for the advance. The essential element is that the mutual obligations of the contract be undertaken *unico contextu.* If this be so, the transaction does not lose its character by the lapse of an interval of time prior to fulfilment. Thus, where money was lent on the faith of a specific security to be given therefor, but the bond was not granted for two months, and sasine thereon was not taken for five years, by which time the debtor had been sequestrated, it was held that the bond was not reducible (Cormack, 1829, 7 S. 868). In transactions falling under the Act the date of the deed is declared to be "the date of recording of the sasine where sasine is requisite, and in other cases of registration of the deed, or of delivery or of intimation or of such other proceeding as shall in the particular case be requisite for rendering such deed completely effectual" (Bankruptcy Act 1856, sec. 6). Questions frequently arise regarding securities granted to creditors. Where money is

advanced on the faith of a specific security to be granted for it forthwith, the transaction is a *novum debitum*, and if the debtor grants the specific security in implement of the bargain within the sixty days, the security will not be reducible, "but the security granted is voidable where the obligation to grant it (1) is undertaken subsequent to entering into the contract; or (2) although *in gremio* of or contemporaneous with the contract, is only an obligation or promise in general terms to grant security; or (3) is an obligation to grant some specific class of security which fails of being sufficiently specific as to the subject-matter, or is indefinite as to the time of performance" (Goudy on *Bankruptcy*, 109).

The right of challenge under the Act is competent to prior creditors, a trustee in sequestration, and the liquidator of a public company who represents prior creditors. The title of a trustee in cessio has never been expressly affirmed (see Thomas, 1866, 5 M. 198). The bankrupt cannot in his own right challenge preferences. The trustee under a private trust deed for creditors may do so if the trust deed confers express power to that effect, and the creditors, having themselves a title, accede thereto. Where a transaction is set aside at the instance of an individual creditor, the effect is to lay the subject open to diligence or claims of creditors according to their respective priorities or preferences, but where sequestration has supervened, the subject will become part of the general estate of the bankrupt, subject to any claims of preference thereon at the instance of individual creditors.

3. Sequestration

The principal statute as to bankruptcy in Scotland is the Bankruptcy (Scotland) Act 1856, 19 & 20 Vict. c. 79, which has been amended by the Acts 20 & 21 Vict. c. 19; 23 & 24 Vict. c. 33; 38 & 39 Vict. c. 26; 43 & 44 Vict. c. 34; 44 & 45 Vict. c. 22; 45 & 46 Vict. c. 42; 47 & 48 Vict. c. 16; and 52 & 53 Vict. c. 39. References to sections in what follows are references to the Bankruptcy Act 1856.

(1) Procedure in obtaining Sequestration.—Under the Bankruptcy Act 1856 sequestration may be awarded of the estate of "a living debtor subject to the jurisdiction of the Supreme Courts of Scotland," or of "a deceased debtor who at the date of his death was subject to the jurisdiction of the Supreme Courts of Scotland." While companies registered under the Companies Acts are exempt from sequestration, no other class of debtors against whom notour bankruptcy can be constituted appears to be exempt (see *supra*).

Living Debtor.—The application may be either (1) by the debtor himself with the concurrence of a creditor or creditors qualified as the Act requires; or (2) at the instance of a creditor or creditors so qualified. Where the petition is by the debtor or with his concurrence he need not be notour bankrupt or insolvent. The only requirements are (1) jurisdiction, and (2) the concurrence of duly qualified creditors, *i.e.* of any one creditor whose debt is not less than £50, or of two creditors whose debts together amount to not less than £70, or of three or more creditors whose debts together amount to not less than £100, whether such debts are liquid or illiquid, provided they are not contingent. Where the petition is by creditors alone, the requisites in the case of debtors other than companies are (1) jurisdiction; (2) notour bankruptcy of the debtor; (3) that he have "within a year before the date of the presentation of the petition resided or had a dwelling-place or place of business in Scotland"; (4) that the petitioning creditor or creditors be qualified in the same way as above

stated; (5) that the petition be presented within four months of the debtor's notour bankruptcy (sec. 15). Notour bankruptcy may be constituted anew so as to found a petition (sec. 9). Where the debtor is a company, the requisites in a petition at the instance of the company are the same as in the case of any other living debtor. Where the petition is at the instance of a creditor without the concurrence of the company, the requisites are (1) jurisdiction; (2) notour bankruptcy; (3) that the creditor be duly qualified as above stated; (4) that either the company have within a year before the date of the presentation of the petition carried on business in Scotland, and any partner have resided or had a dwelling-house there, or that the company within said period have had a place of business in Scotland; (5) that the petition be presented within four months of notour bankruptcy (secs. 13, 14, 15). Where a petition is presented in the sheriff court it is necessary that the debtor "for the year preceding the date of the petition" have "resided or carried on business" in the county in question (sec. 18).

Deceased Debtors.—The requisites are (1) that the deceased was at his death subject to the jurisdiction of the Court; (2) that the petition be presented either by a mandatory to whom the deceased had granted a mandate to apply for sequestration, or by a creditor or creditors qualified as already mentioned (secs. 13, 14). Notour bankruptcy or insolvency is not essential.

In any proceedings under the *Cessio* Acts where the liabilities of a debtor exceed £200, the sheriff, if he thinks it expedient, has power to award sequestration (44 & 45 Vict. c. 22, sec. 11).

A petitioning or concurring creditor's debt may be either liquid, as under a bond or bill, or illiquid, as a debt due upon open account or upon a statement of intromissions. There must be produced along with a petition for sequestration (1) an affidavit to the verity of the debt of a petitioning or concurring creditor; (2) the account and vouchers of the debt (sec. 21); (3) written evidence of the debtor's notour bankruptcy where the debtor is not the petitioner. An oath of credulity is sanctioned in certain cases (secs. 21, 22, 23, 25). The creditor in the oath must depone what other persons if any besides the bankrupt are liable for the debt or any part of it, and specify any security held over the estate of the bankrupt or other obligants, and depone that he holds no other obligants or securities than those specified; and where he holds no other person than the bankrupt so bound and no security he must depone to that effect (sec. 22). Securities, however, are not deducted or valued. The account and vouchers acquired for petitioning are such as are *prima facie* proof of the debt. An open account *in re mercatoria* is a good voucher, but an unadjusted account between two joint-adventurers has been held insufficient (Knowles, 1865, 3 M. 457). The absence of a necessary stamp will invalidate a voucher.

On a petition by or with concurrence of a debtor, or by his mandatory or with concurrence of his successors if he is dead, the judge must forthwith award sequestration. Where the petition is by a creditor without consent of the debtor, the Court must forthwith grant warrant to cite the debtor or his successor to appear and show cause why sequestration should not be awarded, and at the same time order intimation to be made in the *Gazette* (sec. 26), "and if the debtor, or if dead his successor, do not appear at the diet of appearance either in person or by his counsel or agent, and show cause why the sequestration cannot competently be awarded, or if the debtor so appearing do not instantly pay the debt or debts in respect of which he was made bankrupt or produce written evidence of the same being

paid or satisfied, and also pay or satisfy or produce written evidence of the payment or satisfaction of the debt or debts due to the petitioner or to any other creditor appearing or concurring in the petition, the Lord Ordinary or Sheriff, on production of evidence of the citation and of the foresaid requisition for sequestration, shall award sequestration" (sec. 30). The Court has no discretion in the matter of awarding sequestration.

In the case of a *company*, sequestration may be awarded of the estates of the company and partners jointly, or of their respective estates separately.

The deliverance awarding sequestration is final, but where sequestration is refused the deliverance may be appealed (secs. 31, 170, 171).

In all questions under the Act regarding sequestration of the estates of debtors, the sequestration is held to commence and take effect on and from the date of the first deliverance on any petition for sequestration, which is held to be the date of the sequestration, although the sequestration be not actually awarded until a later date (sec. 42).

(2) RECALL OF SEQUESTRATION.—The petition for recall, in the ordinary case, must be presented to the Lord Ordinary on the Bills within forty days after the date of the award, but where presented by nine-tenths in number and value of the creditors ranked, may be presented at any time (secs. 31, 32, 126). Defects in the statutory requisites form good grounds for recall, as *e.g.* insufficiency of a petitioning creditor's oath or vouchers. Where there is any *ex facie* defect in the statutory proceedings, the Court must recall the sequestration; but where there is no invalidity *ex facie* of the proceedings, the Court may exercise its discretion as to recall. Objections to a sequestration based on mere inexpediency are not good grounds for recall, as *e.g.* the absence of apparent estate, or the expense of the process as compared with the value of the estate. Decree of recall reinvests the bankrupt in his estate, but pending any petition for recall, proceedings in the sequestration must go on as if no such petition had been presented (sec. 33).

(3) REGISTRATION AND PUBLICATION.—The party applying for sequestration must, before the expiry of the second lawful day after the first deliverance, if by the Lord Ordinary, present to the Keeper of the Register of Inhibitions at Edinburgh, or present or transmit by post to him before the expiration of the second lawful day after said deliverance if by the sheriff, an abbreviate of the petition and deliverance, signed by him or his agent, in the form of Schedule A, No. 1, appended to the Act (sec. 48). He must also, within four days of the date of the award when in the Bill Chamber, or if by the sheriff, within four days after a copy of the deliverance could be received in course of post in Edinburgh, insert a notice in the form of Schedule B of the Act of 1856 in the *Edinburgh Gazette*, and also within six days from said date insert said notice in the *London Gazette* (sec. 48). He must also, where the award is in the Bill Chamber, transmit a certified copy of the petition and first deliverance and of the deliverance awarding sequestration and the productions to the sheriff-clerk of the county to the sheriff of which the process has been transmitted (sec. 43).

(4) INTERIM PRESERVATION.—By the Bankruptcy Act 1856, sec. 16, the Court to which the petition for sequestration is presented is empowered "to take immediate measures for the preservation of the estate, either by the appointment of a judicial factor, who shall find such caution as may be deemed necessary, with the powers necessary for such preservation, including the power to recover debts, or by such other proceedings as may be requisite, and such interim appointment or proceedings shall be carried

into immediate effect." The interim factor may recover debts, open lockfast places, demand delivery of goods, stop *in transitu*, require payment of bills, and generally take all steps necessary for preserving the estate. He may probably carry on a going business where it is of a perishable nature, but cannot otherwise sell the estate unless with judicial authority.

(5) CLAIMS FOR VOTING.—To entitle a creditor to vote or draw a dividend, he must produce at the meeting for election of a trustee, or in the hands of the trustee after he is confirmed, an oath as to the amount of his claim, and the account and vouchers necessary to prove it. The trustee makes no deliverance upon claims to vote, but a scrutiny may take place, and the sufficiency of claims be judicially ascertained in the course of such proceedings as a competition for the trusteeship, or on appeal against a creditor's resolution. An objection to a claim is not barred by its having been voted on formerly without objection. A final judgment against a particular vote on a claim prevents its being voted on thereafter. Where a creditor's vote is objected to, the creditor is not debarred from voting while an objection is *sub judice*. The lodging of a claim interrupts prescription (sec. 109), and also creates jurisdiction *ex reconventione*.

The form of oath is the same as for petitioning, except that it must value and deduct securities over the bankrupt's estate, and claims upon co-obligants and securities liable in relief to the bankrupt. An oath for ranking deducts only securities over the bankrupt's estate. The oath must be definite as to the amount of the debt. Marginal additions and erasures *in essentialibus* must be duly authenticated. Several debts may be accumulated in one oath. The oath must deal with obligants and securities separately. A creditor is entitled to vote and rank for the accumulated sum of principal and interest to the date of the sequestration (*i.e.* the date of the first deliverance), and if the debt is one due after the date of the sequestration he must deduct interest from that date, and any discount applicable to it by usage of trade. Where the creditor resides in the United Kingdom, he must personally take the oath before a judge ordinary, magistrate, or justice of peace. The creditor must be actually sworn by the magistrate, and must along with him sign the oath. The claim by a firm may be sworn by a partner (sec. 25). A claim by a registered company or other corporation may be sworn to by the secretary, manager, cashier, clerk, or other principal officer (sec. 25), as *e.g.* the assistant manager of a bank, but not the agent of a branch. One of a body of trustees or executors may depone. A factor, agent, or mandatory cannot take the oath, except where the principal is abroad or *incapax* (see secs. 23, 25). Special provisions are made regarding creditors residing out of the United Kingdom, or who are under age or incapable (secs. 23, 25). Provision is also made for rectification of defective oaths (sec. 51), but this does not apply to an oath in petitioning. Wilful falsehood in an oath exposes a deponent to a prosecution for perjury at common law, and also to a prosecution under section 178 of the Bankruptcy Act 1856, and under section 14 of the Debtors Act 1880.

Along with the oath must be produced the account and vouchers of the debt. Where debts stand on open account, production of the account is enough if it is an ordinary trade account, or such as to indicate that no separate vouchers exist. Any document specially vouching a claim must be produced, as *e.g.* a bond, bill, or lease. Where debts are numerous and run into account, the account must be produced and every item vouched. Such entries as "To balance," "To amount of account rendered," "To cash lent you," have been held insufficient without vouchers. In the case of an

open account from business books, it must be a proper trade account for goods supplied or work done, and be complete. Such an entry as "To goods," or "To goods per invoice," is not good without details. An open account does not form a good voucher for cash advances contained in it. A prescribed bill, account, or other voucher is not sufficient, nor an unstamped voucher. Vouchers may be rejected if *prima facie* collusive or suspicious, as *e.g.* acknowledgments of debt to near relatives on the eve of bankruptcy. An account need not be signed by the magistrate, but the creditor should sign it where there is no other voucher. If, however, the account is incorporated as an essential part of the oath by reference, as where the valuation and deduction of a security is made in it instead of in the body of the oath, it must be signed both by the magistrate and the creditor. Vouchers produced along with the account do not need to be signed. Securities constituted over the bankrupt's estate at the date of the sequestration must be deducted and valued in the oath and the balance specified, and the creditor votes for such balance only. For definition of "Security," see section 4 of the Bankruptcy Act 1856. For voting purposes (but not for ranking) the creditor must deduct the value of the obligation of any "obligant bound with but liable in relief to the bankrupt," or "any security from an obligant liable in relief to the bankrupt or any security from which the bankrupt has a right of relief," to the extent to which the bankrupt is entitled to relief. Securities and claims against co-obligants must be valued, though believed to be worthless, the value being put at a nominal figure. A cumulo valuation of several securities or claims is incompetent in the general case.

A secured creditor is bound, at the expense of the estate, to convey his securities or claims against co-obligants to the trustee at the valued amount *plus* 20 per cent thereof, on being requisitioned to do so either (1) by the trustee, with the consent of the commissioners, within two months after the creditor has used his oath in voting at any meeting, or assenting to or dissenting from the bankrupt's composition or discharge; or (2) by the majority in value of the other creditors assembled at any meeting, and during such meeting (sec. 62). At any time before such requisition the creditor may correct his valuation by a new oath, and deduct such new value from his debt (sec. 62).

A contingent creditor has two courses open to him—(1) to have his claim valued, and to vote and rank on the valued amount; or (2) to have a dividend set aside for him, and wait the purification of the contingency (secs. 53, 129, 126). In the latter case the creditor has no vote in the interval. Special provision is made in the Act for annuity creditors (secs. 54, 55). A creditor may vote through a mandatory (sec. 63), who may be one of the commissioners, but should not be the trustee (see Witham, 1884, 11 R. 776), and who may be appointed to vote at all meetings or at a particular meeting. The mandate must be in writing, and is commonly in the following terms:—

(Place and date.)

Sir,—I hereby authorise you to vote and act at all meetings in the sequestration of A. B., with the same powers as belong to

Your obedient servant,

(Signed) C. D.

To (insert name and address of mandatory).

A mandate to vote and act at all meetings empowers the mandatory to consent to a composition, and to concur in the bankrupt's discharge, and to question the bankrupt at his examination, and to bind the principal to pay

a share of the expense of an action carried on by the trustee, but not to appeal against *e.g.* deliverance by the sheriff recalling a resolution.

(6) FIRST MEETING—ELECTION OF TRUSTEE.—The deliverance awarding sequestration appoints a day, hour, and place for the first meeting of creditors, the date being "not earlier than six nor later than twelve days from the date of the *Gazette* notice of the sequestration having been awarded" (sec. 67). Six clear days must elapse. The sheriff may be required to preside, or may do so without notice. If he does not attend, the majority of creditors in value appoint a preses and clerk. The bankrupt must at this meeting deliver to the clerk a state of his affairs and rental of his heritable property, which must be signed by him and delivered to the trustee. In a sequestration of a company and partners separate states must be made up for the company and each partner. The trustee must compel the bankrupt to produce a state and rental. The preses must mark the oaths and productions with his initials, and sign the minutes. If the sheriff is present, the clerk retains the oaths, subject to exhibition thereof, in his hands until the election is determined, when he hands them to the trustee (sec. 68). If the sheriff is not present, they remain in the hands of the sheriff-clerk, if he or his depute be present; and, if not, they are transmitted by the preses to the sheriff-clerk in reporting the proceedings to the sheriff, and in either case they remain in the hands of the sheriff-clerk until the trustee is finally appointed. The trustee is elected by "the creditors or their mandatories who have produced their oaths and documents of debt, and who have been entered in the minutes" (sec. 68), a majority in value prevailing in case of competition (sec. 101). A creditor is not disqualified from voting from being conjunct or confident with the bankrupt, or having an adverse interest to the general creditors, or because his vote enables him to control the election. The bankrupt's wife or any trustee for her is disqualified (sec. 64). No creditor can vote on a claim acquired after the sequestration otherwise than by succession or marriage (sec. 64), but this does not apply to a bill-holder taking up a bill discounted by him, nor a cautioner who pays and ranks in lieu of the creditor.

The Bankruptcy Act 1856, sec. 68, excludes from the office of trustee (1) the bankrupt; (2) any person conjunct or confident with him; (3) any person who holds an interest opposed to the general interest of the creditors; (4) any person whose residence is not within the jurisdiction of the Court of Session. Instances of opposing interest are where the candidate claims a challengeable preference, or has a large and disputed claim against the bankrupt or one shown by documents produced to be open to suspicion. Holding a security falling to be valued and deducted does not seem necessarily to imply disqualification. At common law a candidate may be objected to on the ground that he is not major and *sui juris*, or that he is personally hostile to the bankrupt, or holds an office incompatible with the trusteeship, or on the ground of personal misconduct, as *e.g.* putting an illusory value on a security in his claim with a view to obtain the trusteeship, or promising a share of the commission to a creditor to obtain his vote, tampering with the claims of creditors, etc. The party alleging disqualification may be allowed a proof if it is denied. If a personal objection is sustained which was not stated at the meeting, a new election will be ordered.

Formal nomination of the candidate at the meeting is not required. Only one person can be elected trustee. Two or more may be elected in succession in case of non-acceptance, death, etc. Where, however, the

failure of the first trustee is after his confirmation, a new meeting must be held. In the case of the sequestration of a company and partners, one trustee may be elected on all estates or one on each, separate votes being taken in the latter case by the different bodies of creditors, unless all the creditors have similar votes on each estate. Provision is made under section 74 for holding a new meeting for election under certain circumstances, and in various cases the Court of Session have *ex nobili officio* ordered a new meeting (see Goudy on *Bankruptcy*, p. 27).

The creditors at the meeting fix the amount of caution to be found by the trustee, and also decide on the sufficiency of the caution offered. The trustee elected must forthwith lodge with the sheriff-clerk a bond of caution signed by him and his cautioner, which bond is furnished to him by the sheriff-clerk (sec. 72). Creditors may accept the bond of a guarantee society in lieu of the bond of caution foresaid (*ibid.*). The cautioner must be resident within Scotland. Caution cannot be dispensed with, and must not be illusory. Where there is a competition, each candidate should offer caution.

If the sheriff be present at the meeting and there be no competition for the office of trustee or objection stated to the candidates, he must, by deliverance on the minutes, declare the person chosen to be trustee (sec. 69). If there be competition or objection, such objection to the votes or candidates must be stated at the meeting, and the sheriff may either forthwith decide thereon or make avizandum, or if necessary make a short note of the objections and answers, on which he must within four days after the meeting hear parties *viva voce*, and declare the person or persons trustee or trustees in succession whom he finds to be duly elected. Where the sheriff is not present at the meeting, the preses reports the proceedings to him, and in the absence of competition or objection he declares the person chosen trustee (sec. 70). If there is competition or objection, the parties must within four days of the date of the meeting lodge with the sheriff-clerk short notes of objections, and the sheriff must forthwith hear parties thereon *viva voce* and give his decision. The note of objections may be informal, and need not be signed by a law-agent. The objections must be specific. Grounds of objection to a vote may be stated although not stated at the meeting. The sheriff is not confined to the objections stated to any particular vote, but he cannot disallow votes not objected to. New grounds of objection may competently be stated on an appeal of the sheriff's judgment. The sheriff may grant diligence to recover documents for instantly verifying objections, but cannot allow a proof at large.

The expenses of a competition are payable by the unsuccessful to the successful party.

The sheriff's judgment declaring an election is final; but a decision that there has been no valid election may be appealed, as may also interlocutory deliverances prior to judgment and any judgment which is *ultra vires*. The appeal lies to either Division of the Court of Session or to the Lord Ordinary on the Bills during vacation, and must be taken within eight days (sec. 170).

On the trustee who is declared elected lodging his bond of caution, the sheriff confirms the election, and the act and warrant in favour of the trustee is issued by the sheriff-clerk, and a copy must forthwith be sent to the Accountant of Court (sec. 73), and an abbreviate recorded in the Register of Abbreviates of Adjudications within twenty-one days (sec. 79). The act and warrant forms conclusive evidence of the trustee's title.

(7) THE COMMISSIONERS, three in number, are elected by the creditors at the first meeting. They do not find caution, and act by a quorum. No person is eligible who is disqualified to be trustee. Mandatories for creditors may be elected. A commissioner may resign at any time. Provision is made for his removal by secs. 75, 76, 159. The commissioners superintend the proceedings of the trustee, concur with him in submissions and transactions, examine and audit the trustee's accounts, and declare or postpone dividends. Their concurrence is necessary to enable the trustee to do certain acts, *e.g.* fixing the price of heritable estate for sale (see secs. 114, 136, 85, 176). Their sanction does not relieve the trustee of the consequences of a failure to perform a statutory duty.

(8) EXAMINATION OF BANKRUPT.—Within eight days of the date of his act and warrant the trustee must apply to the sheriff to name a day for the public examination of the bankrupt. It must not be sooner than seven nor later than fourteen days from the date of the warrant issued by the sheriff on the bankrupt to attend. The diet is published in the *Gazette*, and intimated to the creditors (sec. 87). Warrant may be granted for the apprehension of the bankrupt (secs. 88, 89; 46 & 47 Vict. c. 52, secs. 117, 118). Commission may be granted for the examination of the bankrupt under certain circumstances (sec. 88). The bankrupt's wife and family, clerks, servants, factors, law-agents, and others who can give information as to his estate may also be examined (sec. 90), but not a creditor or litigant with the trustee as to his claim. The bankrupt and others examined must answer all lawful questions relating to the affairs of the bankrupt; but this does not include examination as to the claim of a creditor or person litigating with the trustee. The examination is not subject to strict rules of evidence, nor are confidential communications privileged. The sheriff may order third parties to produce for inspection any books of account, papers, deeds, etc., relative to the bankrupt's affairs (sec. 91). The examination is on oath, and proceeds in presence of the sheriff (sec. 92). It may be adjourned by the sheriff or commissioner for a short interval, but not at the instance of creditors, to permit of inquiries to test the bankrupt's statements. Questions may be put by the sheriff, the trustee, or any creditor or mandatory with sanction of the sheriff. The sheriff may order the bankrupt to be examined as often as he shall think fit on application by the trustee (sec. 88).

(9) THE EFFECT OF SEQUESTRATION ON DILIGENCE.—Section 107 of the Bankruptcy Act 1856 provides that—"Sequestration shall as at the date thereof (*i.e.* the first deliverance) be equivalent to a decree of adjudication of the heritable estates of the bankrupt for payment of the whole debts of the bankrupt, principal and interest, accumulated at the said date, and when the sequestration is dated within a year and day of any effectual adjudication, the estate shall be disposed of under the sequestration according to the provisions of this Act, provided that nothing herein contained shall affect the rights of any heritable creditor holding a power of sale preferable to the powers of the trustee." Section 108 provides—"Sequestration shall as at the date thereof be equivalent to an arrestment in execution and decree of furthcoming, and to an executed or completed poinding; and no arrestment or poinding executed of the funds or effects of the bankrupt on or after the sixtieth day prior to the sequestration shall be effectual, and such funds or effects, or the proceeds of such effects if sold, shall be made forthcoming to the trustee."

No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the date of the sequestration is available

in any question with the trustee, except only for the interest on the debt for the current half-yearly term, and for the arrears of interest for one year immediately before the commencement of such term (Bankruptcy Act 1856, sec. 118, repealed by 37 & 38 Vict. c. 94, sec. 55, and re-enacted by 42 & 43 Vict. c. 40, secs. 3-5).

A creditor may obtain a preference for the full amount of his debt by an action of maills and duties, even if raised after the confirmation of the trustee. The landlord's hypothec is declared to be unaffected by sequestration (sec. 119). In the case of a deceased debtor the provisions as to diligence are contained in section 110.

(10) VESTING OF ESTATE IN TRUSTEE.—Section 102 provides that "The act and warrant in favour of the trustee shall, *ipso jure*, transfer to and vest in him, or any succeeding trustee, for behoof of the creditors, absolutely and irredeemably, as at the date of the sequestration [*i.e.* the first deliverance], with all right, title, and interest, the whole property of the debtor to the effect following" (see *infra*). "Property" is "every kind of property, heritable or moveable, wherever situated, and all rights, powers, and interests therein capable of legal alienation or of being affected by diligence or attached for debt" (sec. 4). It does not include a *spes successionis*, or property held by the bankrupt in trust although on *ex facie* absolute title (Heritable Reversionary Co. 1892, 19 R. (H.L.) 43), or property held by the bankrupt on *ex facie* absolute title but really in security, except to the extent of the bankrupt's rights therein (Forbes' Trs. 1898, 25 R. 1012). The property which passes to the trustee includes all property, whether heritable or moveable, in which the bankrupt has a beneficial interest, whether the title be in him or in a trustee for him, to the extent of that interest.

Vesting in the trustee is "subject always to such preferable securities as existed at the date of the sequestration and are not null or reducible" (sec. 102). Where the security is one creating a *nexus* merely, such as an arrestment, the trustee takes the property, and the creditor is entitled to claim in the ranking such preference as the security gives him. Where the security is one conferring a real right, as a pledge or heritable bond, the trustee can only take the subject of the security on paying the debt. A law-agent claiming a lien for his account must, if required, give up the documents to the trustee, being then entitled to a preference for his claim; but he has no claim against the trustee personally. The holder of an incomplete security may complete it at any time before the trustee obtains a title to the property in question by confirmation or infeftment, etc.

Where the bankrupt's rights are subject to equitable exceptions, these can be pleaded against the trustee who takes the estate *tantum et tale*, as it stands in the bankrupt. Thus specific property obtained by the bankrupt's fraud cannot be retained, or funds of others wrongly immixed with his own, if distinguishable. Again, a trustee's right to demand a valid feu-charter in implement of articles of roup under which the bankrupt had bought, was held subject to a bond granted by the bankrupt while holding the property on a defective title previously granted under the articles, which was erroneously considered to give him a good feudal title (Edmond 1855, 18 D. 47 and H.L. 3 Macq. 116). The precise limits of the doctrine of *tantum et tale* cannot be said to be clearly defined.

Any person claiming right to estate wrongly included in a sequestration may present a petition to the Lord Ordinary on the Bills to have it taken out of the sequestration (sec. 104).

Moveable Estate.—The act and warrant vests "the moveable estate and effects of the bankrupt wherever situated so far as attachable for debt to

the same effect as if actual delivery or possession had been obtained or intimation made at that date, subject always to such preferable securities as existed at the date of the sequestration and are not null or reducible" (sec. 102). The trustee's title requires no procedure by way of delivery or intimation to complete it, in the ordinary case. Where the sequestration is of a deceased debtor, and a successor is in possession, or has expede confirmation, the judgment awarding sequestration ordains the successor to convey the estate to the trustee (sec. 29).

Heritable Estate.—The act and warrant vests "the whole heritable estate belonging to the bankrupt in Scotland to the same effect as if a decree of adjudication in implement of sale as well as a decree of adjudication for payment and in security of debt, subject to no legal reversion, had been pronounced in favour of the trustee and recorded at the date of the sequestration, and as if a poinding of the ground had then been executed, subject always to such preferable securities as existed at the date of the sequestration and are not null or reducible, and the creditor's right to poind the ground as hereinafter provided; and the right of the trustee shall not be challengeable on the ground of any prior inhibition (saving the effect which such inhibition may be entitled to in the ranking of the creditors)" (sec. 102). The statutory vesting is not equivalent to infeftment, and while infeftment is not taken by the trustee, it does not prevent infeftment by persons holding incomplete conveyances. The trustee may sell or convey the heritable estate without making up a feudal title, and without the concurrence of the bankrupt (sec. 105). As to real estate in England or Ireland, see section 102.

All property acquired by the bankrupt prior to his discharge falls under the sequestration (sec. 103). The trustee on coming to the knowledge of the acquisition must present a petition to the Lord Ordinary to have all right and interest therein declared to be vested in him. This proceeding is necessary to complete the right of the trustee to such acquisitions, and to exclude the diligence of creditors of the bankrupt in debts contracted after the sequestration. If the acquisitions claimed by the trustee are the product of a business which the bankrupt has carried on with the acquiescence of the trustee and creditors, the trustee may be barred from claiming such to the exclusion of new creditors. It will further be a good answer by the bankrupt to the petition that the estate claimed has been abandoned to him by the creditors, either expressly or by a course of actings (*per* Lord Watson in Northern Herit. Co. 1891, 18 R. (H.L.) 37). Knowledge that the bankrupt is carrying on a trade or business does not of itself imply abandonment by the creditors in favour of the bankrupt of their right to his acquisitions. It is no answer to the trustee's claim for acquisitions that the original trustee has been discharged, or that the bankrupt has been discharged between the date of acquisition and the presentation of the petition.

Special provisions are made by section 149 as to Government pay, pensions, etc., to which the bankrupt may be entitled.

A trustee is entitled to set aside for behoof of creditors all alienations by a debtor while insolvent or bankrupt, which are voidable by statute or at common law, and he may do so either by way of action or exception (sec. 11). Alienations by the bankrupt after sequestration are null and void (sec. 111), subject to exception in the case of certain transactions taking place in *bona fide* ignorance of the sequestration.

Rights of Action, generally, vest in the trustee, and this extends to actions of damages for personal injury to the bankrupt, but not to an injury

wholly affecting the bankrupt's character, although damages recovered in such an action will fall to the trustee.

Contracts.—The trustee is not bound to take up existing contracts of the bankrupt, such as feus, leases, or shares, but is entitled to elect within a reasonable time whether he will do so or not. Adoption of a contract involves personal liability on the part of the trustee for the obligations thereof.

Powers purely personal exercisable by the bankrupt which do not affect the sequestrated estate remain in him solely. Powers incidental to the sequestrated estate as a general rule pass to the trustee, as *e.g.* power to revoke a donation *inter virum et uxorum*, or the right to elect between legitim and conventional provisions.

Management and Realisation of Estate.—The trustee must "manage, realise, and recover the estate of the bankrupt wherever situated and convert the same into money according to the directions given by the creditors at any meeting, and if no such directions are given he shall do so with the advice of the commissioners" (sec. 82).

(11) SECOND MEETING—MANAGEMENT AND REALISATION.—After the bankrupt's examination the creditors hold their second general meeting to consider the position of the estate and give directions as to its administration. The meeting must, in cases of living debtors, be held not sooner than seven nor later than fourteen days after the day appointed for the bankrupt's examination (sec. 87). Prior thereto the trustee prepares a report and estimate as to the estate for submission to the creditors (sec. 96). Creditors act by a majority in value of those present and entitled to vote (sec. 101). A creditor may vote on a question in which he has a direct personal interest, and he may vote upon the full amount of his debt in any question affecting the subject of his security (sec. 59). The trustee and commissioners cannot alienate assets of the estate gratuitously (Caledonian Railway Co. 1875, 2 R. 917).

Resolutions by creditors as to the disposal of the estate may be appealed either to the Lord Ordinary or the Sheriff within fourteen days (sec. 169). The appeal may be on the ground that the resolution violates or is inconsistent with the intention of the Bankruptcy Acts, as *e.g.* a resolution to abandon a claim in the face of an offer to purchase it, or a resolution to carry on a risky or speculative business or contract.

The trustee must lodge all money which he receives in such bank as a majority of the creditors in number and value at any general meeting may appoint, and failing such appointment, in any joint-stock bank of issue in Scotland (provided that the bank be not one in which the trustee is acting partner, manager, or cashier) (sec. 82). The money should be lodged in name of the trustee *qua* trustee. If the trustee keeps in his hands any sum exceeding £50 for more than ten days he must pay interest to the creditors at the rate of 20 per cent on the excess for such time as the same is in his hands beyond ten days. He further exposes himself to certain penalties (sec. 83).

The trustee must keep a sederunt book, and record therein all minutes, accounts, reports, and other proceedings.

The trustee must within fourteen days after 31st October in each year, or on the first lawful day after the expiry of said fourteen days, deliver to the sheriff-clerk a return of the sequestration (sec. 158).

Subject to any directions given by the creditors, the trustee may, with the consent of the commissioners, compound, transact, or refer any questions (sec. 176).

The creditors may resolve to sell the estate at the second or any subsequent meeting, failing which the trustee acts in the matter with advice of the commissioners (secs. 96, 82). Heritable estate may be sold by a judicial sale (which rarely happens), or by public voluntary sale by auction (secs. 96, 114). Sale of heritable property by the trustee by private bargain is competent with concurrence of a majority of the creditors in number and value, and of the heritable creditors if any, and of the Accountant of Court, on such terms and conditions regarding price and otherwise as the trustee with the concurrence of these parties may fix. Where heritable property is subject to a preferable security conferring powers of sale, the creditor in such security may sell at his own hand in terms of the power, notwithstanding the sequestration, provided he commences proceedings before the creditors have resolved to sell by judicial or public voluntary sale, and does not unduly delay in carrying them out (secs. 112, 114).

Whether the trustee sells by public auction or private bargain he must make up a scheme of ranking and division of the claims of the heritable creditors and other creditors (such as inhibitors) on the price of the property sold, and such scheme must be reported by him to the Lord Ordinary on the Bills or either Division of the Court of Session, and the judgment thereon is a warrant for payment out of the price against the purchaser (sec. 116).

The Bankruptcy Act contains no provision as to the sale of moveable estate. Private sale of book debts has been held incompetent. If on the lapse of twelve months from the date of sequestration, it appears expedient to the trustee and commissioners to sell the heritable or moveable estate not disposed of, a meeting falls to be held to consider the matter, and if three-fourths of the creditors in value at the meeting decide in favour of a sale in whole or in lots, the trustee must cause the estates to be sold by auction after notice thereof in the *Gazette* by way of advertisement (sec. 136).

(12) RANKING OF CLAIMS—DIVIDENDS.—The proceeds of the sequestrated estate when realised, and after deduction of expenses, form a fund for division among those who were creditors of the bankrupt at the date of the sequestration, ranked according to their several rights and interests (sec. 121).

On the expiry of four months from the date of the award of sequestration, the trustee must make up a state of the funds and an account of his intromissions and management; and within fourteen days after the expiry of said four months the commissioners must examine such state and account and audit the same, and decide what part of the estate, if any, shall be divided among the creditors (sec. 125). Similar states and accounts must be made up and procedure followed on the expiry of eight months from the date of said deliverance, and at similar intervals of time thereafter, in order that a dividend may be paid at the expiry of every three months from the date of payment of the immediately preceding dividend (secs. 130, 132, and 20 & 21 Vict. c. 19, sec. 6).

Claims for Ranking, in order to receive effect in the first dividend, must be produced two months before the time fixed for the payment thereof, or when the time has been accelerated, one month prior thereto (sec. 123), and in subsequent dividends the time for lodging claims is at least two months before the date of payment. A creditor who fails timeously to lodge his claim is entitled to an equalising dividend on the occasion of the payment of subsequent dividends (sec. 123). If a creditor be not in possession of the requisite accounts and vouchers, he must state in his oath the cause of their non-production, and in whose hands they are,

and he is thereupon entitled to have a dividend set apart till a reasonable time be afforded for the production, or for otherwise establishing the debt according to law.

Interest on debts can only be claimed to the date of sequestration. A creditor holding a security over part of the sequestrated estate must, in his claim for ranking, put a specified value thereon, and deduct such value from his debt and specify the balance, and he ranks only for such balance (sec. 65). A security requiring to be so deducted is one forming a burden on the bankrupt's estate at the date of sequestration. A security may be revalued for a subsequent dividend if unrealised. To protect the general creditors against undervaluation, the trustee is entitled to demand a conveyance of any security at the valued amount (sec. 65). Obligations by co-obligants or securities not over the bankrupt's estate must be set forth in the oath, but need not be valued or deducted for ranking. The creditor of a company claiming on the estate of a partner can rank only under deduction of his claim against the company's estate (sec. 66). As to contingent and annuity creditors, see *supra*, p. 339.

Double Ranking.—There can be only one claim in respect of the same debt against the bankrupt estate. Thus where a creditor ranks on an estate for his whole debt and obtains a dividend, and thereafter recovers the balance from a cautioner for the debt, the latter cannot claim to rank on the bankrupt estate in relief of the sum so paid by him. Again, in the case of a bill drawn or accepted for accommodation, if both parties become bankrupt, and the holder ranks on the estate of each for the amount in the bill, and receives dividends, the trustee on the estate of the accommodation party or cautioner is not entitled to claim against the estate of the principal debtor in relief of the dividend which the former estate has paid to the holder. If the cautioner holds securities belonging to the bankrupt which have been specifically appropriated to his relief, he may recoup himself therefrom, although he cannot do so by pleading retention of monies or debts which have not been so specifically appropriated (Royal Bank, 1881, 8 R. 805, 9 R. (H.L.) 67). Where the cautioner is partly secured it has been held that the creditor has it in his option either to rank on the principal's estate first for the whole debt and recover the balance from the cautioner, or to claim the whole debt from the cautioner and leave him to rank on the principal's estate, which he will only be able to do under deduction of his securities (Jamieson, 1875, 2 R. 701; *cf* Christie, 16 S. 224, *per* Lord Mackenzie). (See Goudy on *Bankruptcy*, p. 591.)

Partial payments before sequestration to account of a debt, whether made by the bankrupt or a co-obligant, must be deducted from the creditor's claim, but not payments made after the date of sequestration.

Within fourteen days after the expiration of four months from the date of the deliverance awarding sequestration, the trustee must, unless payment of dividend has been postponed, examine the creditors' claims, and in writing, either (1) admit, or (2) reject them, or (3) require further evidence in support thereof. There must be a deliverance on each claim, and it should be dated and signed and unambiguous. The trustee cannot both reject a claim and at the same time call for further evidence. Admission of a claim may be total or partial, absolute or conditional, and may admit a claim as ordinary, preferable, contingent, or postponed, according to circumstances. A deliverance admitting a claim when once issued cannot be recalled by the trustee *quoad* the particular dividend. Admission of a claim for a first dividend does not bar its rejection for a subsequent one.

Rejection of a claim must proceed on a ground specified in the deliverance. It is the duty of the trustee to call for further evidence where the circumstances make it appropriate, and if he rejects without doing so he may be held liable in expenses in an appeal.

Within eight days after the expiration of the fourteen days abovementioned, the trustee must give notice in the *Gazette* published next after the expiration of such fourteen days, of the time and place of payment of the dividend, and also notify the same by letters put into the post-office on or before the first lawful day after the said fourteen days, addressed to each creditor, in which he must specify the amount of the claim and the proposed dividend thereon; and when he has rejected any claim he must notify the claimant thereof by letter as aforesaid, and send a copy of his deliverance, and specify the amount of the claim (sec. 127). A deliverance by a trustee admitting or rejecting a claim may be appealed to the Lord Ordinary on the Bills or Sheriff within fifteen days from the date of the publication in the *Gazette* of the aforesaid notice of payment (sec. 127). Where a creditor is successful in an appeal, and is entitled to expenses against the trustee, no share of these can be a charge upon his dividend; and the same holds as to the trustee's expenses if no expenses are found due. Within fourteen days after the expiry of eight months from the award of sequestration, the trustee and commissioners proceed to make provision for the payment of a second dividend should there be sufficient funds, and the said procedure applies, in this and subsequent dividends, as is provided in regard to the first dividend.

The first dividend is, in ordinary case, paid on the first lawful day after the expiry of six months from the date of the award of sequestration, the second on the first lawful day after the expiry of ten months from said date, and subsequent dividends on the first lawful day after the expiry of three months from the date of payment of the preceding one (secs. 125, 129, 131, 132; 20 & 21 Vict. c. 19, sec. 6). The trustee must appoint a place of payment, and notify the creditors by *Gazette* notice and by post letters (secs. 127, 130).

The trustee must lodge in bank dividends effeiring to contingent creditors and creditors in claims under appeal.

The Bankruptcy Act 1856 contains provision under which the periods for payment of dividends may be accelerated, postponed, or altered (secs. 133, 134, 135), and also for depositing in bank unclaimed dividends (sec. 153; 58 & 59 Vict. c. 19, sec. 10).

(13) DISCHARGE OF BANKRUPT WITHOUT COMPOSITION. — Discharge may be applied for (1) at any time after the meeting held after the bankrupt's examination, provided that every creditor who has duly produced his oath concurs; (2) on the expiry of six months from the date of the award of sequestration, provided that a majority in number and four-fifths in value of the creditors who have produced oaths concur; (3) on the expiry of twelve months from the said date, provided a majority in number and two-thirds in value of such creditors concur; (4) on the expiry of eighteen months from said date, provided a majority in number and value of such creditors concur; (5) on the expiration of two years from the date of said deliverance without any consents of creditors (secs. 146, 101). The petition is presented to the Lord Ordinary on the Bills or to the Sheriff. Prior thereto the trustee must have prepared a report as to the bankrupt's conduct (sec. 146), which may be demanded of him on the lapse of five months from the date of the award of sequestration. Where a trustee has died or become incapacitated, or left the country, the Court of Session will,

on petition, remit to the Accountant of Court, and accept his report in lieu of one by the trustee.

By the Bankruptcy and Cessio Act 1881 (44 & 45 Vict. c. 22, sec. 6), it is provided that discharge shall not be granted unless it is proved to the satisfaction of the Lord Ordinary or Sheriff either (*a*) that a dividend or composition of not less than five shillings in the pound has been paid out of the estate of the bankrupt, or that security for payment thereof has been found to the satisfaction of the creditors; or (*b*) that the failure to pay five shillings in the pound as aforesaid has, in the opinion of the Lord Ordinary or the Sheriff, as the case may be, arisen from circumstances for which the bankrupt cannot justly be held responsible. Any creditor may oppose the petition, and in addition to the provisions of the Act of 1881 above quoted, the following grounds of opposition may be pleaded—(1) material defects in the statutory requirements of the petition; (2) failure of the bankrupt to comply with his statutory duties in material respects; (3) fraud or collusive conduct on the part of the bankrupt; (4) extravagance or reckless trading on the part of the bankrupt. Where discharge is obtained there are three steps of procedure—(1) a deliverance finding the bankrupt entitled to discharge; (2) a declaration or oath by the bankrupt; (3) a deliverance granting discharge (secs. 146, 147).

The deliverance on the petition may be appealed within eight days if pronounced by the Sheriff, or fourteen days if by the Lord Ordinary (secs. 170, 171).

A discharge without composition does not reinvest the bankrupt in the sequestrated estate, which remains vested in the trustee for distribution among the creditors, but it frees him from all debts and obligations contracted by him or for which he was liable at the date of the sequestration, and all property acquired by him subsequent to discharge belongs to him free from such claims (sec. 147).

Where a firm estate and the estates of the partners as individuals are sequestrated, discharge may be granted to the partners as such and as individuals, or to them as partners only, or as individuals only, and one partner may obtain discharge as a partner and as an individual, though the other partners do not apply.

By section 150 of the Bankruptcy Act 1856, it is provided that "All preferences, gratuities, securities, payments, or other considerations not sanctioned by this Act granted, made, or promised, and all secret or collusive agreements and transactions for concurring in, facilitating, or obtaining the bankrupt's discharge either on or without an offer of composition, and whether the offer be accepted or not, or the discharge granted or not, shall be null and void," and penalties are enacted against creditors who have obtained any such preference, gratuity, etc. (*ibid.*).

(14) DISCHARGE ON COMPOSITION CONTRACT.—A first offer of composition may be made at the meeting for the election of trustee, or at the meeting after the bankrupt's examination, or at any subsequent meeting called for the purpose by the trustee with consent of the commissioners (secs. 137, 139). If it is made at the meeting for election of trustee, the resolution to entertain it must be carried by a majority in number and nine-tenths in value of the creditors present who have produced oath and vouchers (sec. 137); and if at any subsequent meeting, by a majority in number and four-fifths in value (sec. 139). The offer must be a rateable proportion per pound to each of the creditors, and must include all the bankrupt's creditors, not merely those actually claiming. It must be accompanied by an offer of caution (secs. 137, 139). Creditors may stipulate

for security in addition to caution to be applied *pro rata*. An offer cannot be withdrawn without sufficient cause assigned.

If the offer of composition is made at the first meeting and entertained, the trustee advertises the fact in the *Gazette* and by letters to each of the creditors (sec. 137). The offer is then considered at the second meeting, and an acceptance of it must be by a majority in number and nine-tenths in value of the creditors present (sec. 138). A partner has authority to accept a composition for his firm. If the offer be at the second meeting, *i.e.* after the bankrupt's examination, or any subsequent one, and is entertained, the trustee calls a meeting for a day not less than twenty-one days thereafter, and must seven days prior thereto notify by letter all the creditors (sec. 139). An acceptance by such meeting must be by a majority in number and four-fifths in value of the creditors present (sec. 139). Where a second offer of composition is entertained, the meeting is called in the same way, and an acceptance must be by a majority in number and nine-tenths in value of the creditors present, and must also be agreed to in writing by nine-tenths in value of the creditors who have produced oaths entitling them to be ranked (sec. 145). A resolution to accept a composition may be appealed (sec. 169).

If the offer be accepted, a bond of caution must forthwith be lodged with the trustee (secs. 138, 139, 145). Sequestration proceeds until the bankrupt has been discharged (secs. 142, 140).

Before the composition contract becomes effectual it must be judicially approved by the Lord Ordinary on the Bills or the Sheriff (secs. 138, 139, 145). Prior thereto the commissioners must audit the trustee's accounts and fix the balance thereon, and also his remuneration, and such remuneration and the expenses of the sequestration must have been paid or provided for to the satisfaction of the trustee and the commissioners (sec. 141). An appeal may be taken against the trustee's remuneration to the Lord Ordinary or the Sheriff (sec. 169), or to the Accountant of Court (52 & 53 Vict. c. 39, sec. 17). The approval of the composition may be opposed on the ground of (1) defect in proceedings; (2) fraud or collusion; (3) insufficiency of caution; (4) unreasonableness of composition; (5) failure to provide for or to pay the trustee's remuneration and the expenses of the sequestration.

If the Lord Ordinary or Sheriff approves of the composition, he pronounces a deliverance to that effect (secs. 138, 139, 141, 145). The bankrupt then makes a declaration or oath before the Lord Ordinary or Sheriff that he has made a full surrender of his estate, and has not granted any preferences, etc. (sec. 140). Following thereon the Lord Ordinary or Sheriff pronounces a deliverance discharging the bankrupt and declaring the sequestration at an end, and the bankrupt reinvested in his estate (sec. 140). The deliverance may be appealed within eight days if by the Sheriff, or fourteen days if by the Lord Ordinary (secs. 170, 171). Any creditor may appeal. Under the Act 44 & 45 Vict. c. 22, sec. 6, the bankrupt cannot be discharged unless it is proved to the Lord Ordinary or the Sheriff, as the case may be, (*a*) that a composition of not less than five shillings in the pound has been paid out of the estate, or security found therefor to the satisfaction of the creditors; or (*b*) that failure to pay five shillings in the pound has arisen from circumstances for which the bankrupt cannot justly be held responsible. A deficiency of composition may be made up by subsequent payments (*ibid.*).

Discharge on composition not only releases the bankrupt from all debts due at the date of the sequestration, but also reinvests him in his estates

and terminates the sequestration (sec. 140). He has then full right and title to vindicate his estates, and may take up actions begun by the trustee. Reinvestiture is, generally speaking, commensurate with the estate vested in the trustee, but it has been held that where a holder of partly paid-up shares was sequestrated, he was not entitled after discharge to have his name removed from the register (Taylor, 1889, 16 R. 711). Creditors' securities are not affected by the bankrupt's reinvestiture.

The bankrupt is not entitled to object to any debt given up in the state of affairs as due or admitted without question to be reckoned in the acceptance of the offer of composition, nor to object to any security held by a creditor, unless in the offer of composition such security is stated as objected to and notice in writing is given to the creditor in right thereof (sec. 143); nor can he challenge fraudulent preferences granted by him, unless the right to do so has been specifically stipulated for in the offer of composition, and assigned to him by the trustee (Bell's *Com.* ii. 458). Notice of such stipulation must be given in writing to the creditors in question (sec. 143).

Discharge on composition is effectual to exclude claims against a debtor involving a double ranking, as *e.g.* a claim of relief by a cautioner where the principal has been ranked and received a composition on the debt. Where a holder of bills was ranked on the bankrupt estate of an indorser and drew a dividend, and thereafter was paid by the acceptor the whole amount due on the bills, the indorser was held entitled after discharge to claim repayment of the dividend (Patten, 1853, 15 D. 617). A co-obligant for a debt is not released by the creditor accepting a composition from the debtor, and by the latter's discharge (sec. 56).

After the composition contract has been carried through, the creditors are restricted to their claim for the composition. Failure of payment does not revive the original debts (sec. 140).

Every creditor of the bankrupt is entitled to composition whether he have actually claimed in the sequestration or not, subject to constitution, if demanded, of illiquid claims not admitted by the trustee before completion of the composition settlement. Secured creditors must deduct the value of their securities if unrealised, in claiming composition (M'Bride, 1884, 11 R. 702). There are no statutory rules for such valuation (see *ibid.*). If bills or other documents sustaining diligence are not granted for the composition, diligence may be done on the bond of caution which is registered in the Books of Council and Session or Sheriff Court Books, the extract being lent by the trustee to any creditor requiring it. Creditors with liquid documents of debt obtain warrant for diligence in the Bill Chamber on producing the same and the extract of the bond. Creditors in illiquid debts obtain letters of horning on producing the extract of the bond along with evidence of their debts having been ranked or given up in the debtor's state of affairs, or admitted to vote upon acceptance of composition (sec. 143).

After two years from the date of the deliverance approving the composition the cautioner is not liable to creditors who have not produced their oaths before said date (sec. 144).

A composition settlement and discharge thereon may be set aside on the ground of (1) statutory defects in the proceedings; (2) preferences or collusive agreements prohibited by section 150 of the Act of 1856; (3) material error induced by the debtor's misrepresentation.

(15) DEED OF ARRANGEMENT.—At the meeting for election of trustee, or any subsequent one called for the purpose, a majority of the creditors in

number and four-fifths in value present or represented may resolve that the estate be wound up by deed of arrangement, and that an application be made to the Lord Ordinary on the Bills or the Sheriff to sist proceedings for not more than two months (sec. 35). The resolution is reported (sec. 36) to the Lord Ordinary or Sheriff within four days, and if the sist be granted, the creditors may at any time within the period thereof produce to the judge the deed of arrangement signed by or by authority of four-fifths in number and value of the creditors of the bankrupt, and by the bankrupt. If the Lord Ordinary or Sheriff approves of the deed, he pronounces a deliverance to that effect, and declares the sequestration at an end, the deed being thereafter binding on all the creditors as if they had accepted thereof (sec. 38). There is no statutory form of a deed of arrangement. It may, *inter alia*, be by way of a composition settlement, in which case failure to pay a composition revives the original debts. If it is intended to discharge the bankrupt, this must be part of the arrangement, there being no statutory provision for discharge.

(16) APPEALS IN SEQUESTRATION.—Resolutions of creditors and deliverances by the trustee and commissioners may be appealed either to the Lord Ordinary or the Sheriff by a note of appeal within fourteen days from the date of the meeting or deliverance (sec. 169). The appeal may be taken by individual creditors, the bankrupt, or the trustee or commissioners according to their interests. The Lord Ordinary or Sheriff orders a copy of the note of appeal to be served on the respondent, and at the diet of compearance hears parties *viva voce*, and may then proceed to dispose of the case with or without a record. A record is usually made up. Where an appeal is taken against a resolution of the creditors, the Lord Ordinary or Sheriff may order a new meeting to be held to reconsider the resolution (sec. 169). The Court rarely interferes in a mere question of the discretion of the creditors in managing the estate. Any deliverance pronounced by the sheriff after the award of sequestration (and not declared final by the Act), may be appealed to the Inner House of the Court of Session, or Lord Ordinary on the Bills in vacation, by a note of appeal within eight days from the date thereof. Every deliverance may be appealed unless the statute has excluded review. Thus, while a deliverance awarding sequestration is not appealable, one refusing it is (Marr, 1881, 8 R. 784). So all interlocutory deliverances in a competition for the trusteeship may be appealed, although that declaring the election is final (Tennent, 1878, 5 R. 433; Wylie, 1884, 11 R. 820; Moncur, 1887, 14 R. 305). Pending appeals, the sheriff may grant such orders as are necessary to regulate interim possession and administration (sec. 172).

A judgment of the Lord Ordinary on the Bills may be appealed to the Inner House by reclaiming note within fourteen days of its date. The provisions of the Court of Session Act 1868 do not apply to proceedings under the Bankruptcy Acts. Thus, interlocutory judgments may be reclaimed against without leave. Appeal to the House of Lords is competent in all cases according to the ordinary conditions, except where such appeal is excluded by the terms of the Bankruptcy Acts (sec. 173).

(17) THE TRUSTEE is "the trust proprietor and manager of the estate and effects; the judge in the first instance of all claims of debt and of preference, and the distributor of the divisible fund" (Bell's *Com.* ii. 319). He is vested with the property of the estate, and not merely with the administration thereof like a company liquidator. The trustee represents the body of creditors generally, and not the interests of any particular section. In all matters of importance not specially regulated by statute he

must act with the concurrence of the commissioners (secs. 82, 85), and is subject to the direction of the creditors (secs. 82, 96). The authority of the commissioners or creditors will not relieve him of the consequences of failure to perform statutory duties (Maben, 1837, 15 S. 1087). The trustee may employ a law-agent at the expense of the estate. He cannot claim remuneration for law-agency work done by himself. The law-agent is not an officer in the sequestration, but simply the law-agent of the trustee.

The trustee cannot personally buy up claims against the estate (Bell's *Com.* ii. 319), or purchase assets of the estate (sec. 120), and it is improper, if not incompetent, for him to act as agent for individual creditors in connection with their claims, or as mandatory in voting at meetings (Witham, 1884, 11 R. 776).

The trustee's liability upon contracts which he has adopted has been already referred to (see *supra*, "Vesting of Estate in Trustee").

The trustee is personally liable for dividends for which he has ranked creditors (Hamilton, 1830, 9 S. 40).

A trustee acting beyond his statutory powers will not have relief against the sequestrated estate, but only against any creditors who have specially instructed him (Kirkland, 1838, 16 S. 860).

The trustee may be called on to account for his intromissions and management by a petition to the Lord Ordinary on the Bills or the Sheriff (sec. 86). Under this provision a petition against the trustee's commission has been held competent, as also a petition for delivery of the trustee's report, but not a complaint against the trustee's adjudication upon claims. Where the sequestration is ended by a composition contract, the trustee, notwithstanding discharge, is liable, on petition to the Lord Ordinary or Sheriff by the bankrupt or cautioner, to account for his intromissions and management (sec. 142).

The Accountant of Court may report breaches of duty by the trustee to the Lord Ordinary on the Bills in vacation, or during session to either Division of the Court of Session, and the trustee may thereon be censured or removed or otherwise dealt with as the justice of the case may require (sec. 159).

The trustee's remuneration is in the form of a commission fixed by the commissioners before the payment of each dividend (secs. 125, 130, 132). The deliverance must be intimated by the trustee to every creditor, and to the bankrupt by circular (52 & 53 Vict. c. 39, sec. 17). The commission covers clerks' salaries and writings. It cannot be increased retrospectively (Lindsay, 1880, 7 R. 911). The deliverance may be appealed to the Lord Ordinary or Sheriff within fourteen days (sec. 169), or to the Accountant of Court within ten days of the issue of the circular by the trustee in the form of a note of objections (52 & 53 Vict. c. 39, sec. 17). An incompetent award of commission may be challenged by a creditor by way of objections to the trustee's discharge.

A majority in number and value of creditors present at any meeting duly called for the purpose may remove the trustee without reason assigned (sec. 74). The resolution may be appealed (secs. 169, 170). One-fourth in value of the creditors who have lodged oaths and vouchers may petition the Lord Ordinary on the Bills to remove the trustee on cause shown (sec. 74), which may be serious neglect or misconduct in performing his duties, or conflict of interest, or that the trustee and his cautioners are bankrupt. The trustee may also be removed or censured—(1) by the Lord Ordinary on the Bills for failure to make the annual return, upon a petition and com-

plaint by the Accountant of Court or any creditor (secs. 158, 169); (2) by either division of the Court or the Lord Ordinary on the Bills in vacation, where the Accountant on the complaint of any creditor reports that the trustee is not faithfully and properly performing his duties (sec. 159).

A majority of creditors in number and value present at any meeting called for the purpose may accept the resignation of the trustee (sec. 74).

The trustee may apply for discharge after the final division of the funds. He calls a meeting of creditors, submits the sederunt book, accounts, and list of unclaimed dividends, and the creditors declare their opinion of his conduct (sec. 152). The trustee then petitions the Lord Ordinary or Sheriff for his discharge. Before discharge the trustee must transmit the sederunt book to the Accountant, who thereupon directs him to deposit in bank any unclaimed dividends in his hands. Discharge may be refused on the ground of non-observance of statutory requirements in the proceedings, or material irregularities in the trustee's conduct in the sequestration. A trustee who has resigned, or the representatives of one who has died, may, on handing over the estate, obtain discharge on petition to the Court. An extract of the decree of discharge signed by the clerk of court must be forthwith sent to the Accountant and entered in the Register of Sequestrations, the trustee's bond of caution being delivered up (sec. 152). A discharge may be set aside if obtained by fraud.

The Act makes no express provision for discharge in the case of composition contracts. The practice is to grant discharge in the Bill Chamber after the deliverance approving the composition settlement, upon proof that the trustee has accounted to the bankrupt and his cautioner, and transmitted the sederunt book to the Accountant.

(18) THE CREDITORS AND THEIR MEETINGS.—The creditors entitled to vote in a sequestration have a paramount control of the administration, and the trustee must follow any directions which they give him (secs. 82, 96). The creditors act by resolutions passed at duly convened meetings. Two general meetings are prescribed by statute—(1) the meeting for electing the trustee and commissioners; (2) the meeting held after the bankrupt's examination (see *supra*). Special meetings may be called for various purposes (see *e.g.* secs. 35, 74, 75, 76, 78, 82, 98, 136, 137, 139, 145, 152). Meetings may be called at any time by the trustee or by a commissioner with notice to the trustee (sec. 98), and the trustee must call a meeting at any time when required by one-fourth in value of the creditors ranked on the estate or by the Accountant of Court (sec. 98). Notice of the day, hour, place, and purpose of all meetings must be advertised in the *Gazette* seven days at least prior to the date of the meeting (sec. 99), and in certain cases the creditors must be specially notified (secs. 87, 136, 139, 152). Meetings may be adjourned to the following day. The procedure at meetings is not regulated by statute but by ordinary practice. A preses must be elected. There is no prescribed quorum. In the absence of special statutory provision as to majorities, all questions are determined by "the majority in value of those present and entitled to vote" (sec. 101). In certain cases special majorities are necessary (see *e.g.* secs. 35, 74, 75, 101, 137, 138). Where a particular majority of those present is required, a creditor who does not vote is reckoned as present. Where votes are reckoned by numbers claims under £20 are not counted (sec. 101). A creditor may vote although he has a personal interest in the question; and a secured creditor is entitled to vote on the full amount of his debt without deduction in questions affecting the subject of his security (sec. 59). Business not on the *agenda* may be taken up at a meeting unless such as

requires special notice under the Act. Competent resolutions bind the whole body of creditors. There must be regular minutes of meetings signed by the preses (sec. 68).

Individual creditors may purchase any part of the sequestrated estate sold publicly in terms of the statute (sec. 120). Thus a secured heritable creditor may buy the security subjects, if these are sold by the trustee with the creditor's concurrence.

Creditors are not liable personally for any part of the expenses of the sequestration (sec. 57) unless they have come under obligation expressly or in consequence of their actings (see Ellis, 1849, 11 D. 1347; Reid, 1830, 8 S. 793; Cruickshank, 1843, 5 D. 1198; Kirkland, 1838, 16 S. 860; Smith, 1877, 5 R. 147).

(19) THE ACCOUNTANT OF COURT exercises a supervision over all sequestrations. His duties in taking cognisance of the conduct of the trustee have been already adverted to (see *supra;* secs. 159, 161, 162).

The Accountant has power to require exhibition of the sederunt book, and of any vouchers or documents he thinks proper (sec. 160). He may direct a meeting to be held to consider measures for the management or preservation of the estate (*ibid.*). He cannot, however, interfere with the creditors in the legitimate exercise of their right to control the administration.

The Accountant keeps a Register of Sequestrations, which is patent to all concerned (sec. 157), receives the annual return made up by the trustee (sec. 158), and also the sederunt book transmitted by the trustee when discharged. He makes an annual report to the Court of Session showing the position of each current sequestration (sec. 160).

MISCELLANEOUS.—All conveyances, assignations, instruments, discharges, writings or deeds relating solely to the estate belonging to any bankrupt against whom sequestration has been or may be awarded, and which after the execution of such writings is and remains the property of such bankrupt for the benefit of his creditors, or the trustee under the sequestration, and all discharges to such bankrupt, and all deeds for reinvesting him in the estate, and all powers of attorney, commissions, factories, oaths, affidavits, articles of roup or sale, submissions, decrees-arbitral, and all other instruments and writings relating solely to the estate of such bankrupt, and all other deeds or writings forming a part of the proceedings ordered under such sequestration, are exempt from all stamp duties or other Government duty (Bankruptcy Act 1856, sec. 184; 20 & 21 Vict. c. 19, sec. 10; 23 & 24 Vict. c. 33, sec. 8).

In the case of errors in following the statutory procedure, the Court of Session have *ex nobili officio* provided in various cases a remedy, as *e.g.* where *Gazette* notices have not been duly inserted (Myles, 1893, 20 R. 818), or the abbreviate of sequestration not recorded (Stark, 1886, 23 S.L.R. 507). Similarly where the documents in a sequestration had been lost, the Court made an order enabling claims to be called for anew (Skirving, 1883, 11 R. 17; Wilson, 1 F. 694). And where estate emerges after the trustee has been discharged, it is common in practice for the Court to appoint a meeting to be held to appoint a new trustee. The application in all such cases must be by petition to either Division of the Court.

All deliverances under the Bankruptcy Act purporting to be signed by the Lord Ordinary or any of the judges of the Court of Session or by the Sheriff, as well as all extracts or copies thereof, or from the Books of the Court of Session or the Sheriff Court, purporting to be signed or certified by any clerk of court, or extracts from or copies of registers purporting to be

made by the keeper thereof or extractor, must be judicially noticed by all courts and judges in England, Ireland, and His Majesty's other dominions, and be received as *prima facie* evidence without the necessity of proving their authenticity or correctness of the signatures appended, or the official character of the persons signing, and are sufficient warrants for all diligence and execution by law competent (Bankruptcy Act 1856, sec. 174).

All deliverances, bonds, schedules, and executions under the Bankruptcy Act may be either printed or in writing, or partly both, and service or citation may be made by a competent officer without witnesses (secs. 175, 43), or under the Citation Amendment Act 1882 (see Lochhead, 1883, 21 S.L.R. 144).

Periods of time under the Bankruptcy Act are reckoned exclusive of the day from which such period runs (sec. 5; see Wilson, 1891, 19 R. 219; Myles, 1893, 20 R. 818).

4. Cessio Bonorum

The process of cessio was originally a process whereby an insolvent debtor obtained freedom from personal diligence and imprisonment by surrendering his whole estate to his creditors. Under the Debtors Act 1880 (43 & 44 Vict. c. 34), it has become a minor form of process for winding-up bankrupt estates.

A petition for cessio may be presented by any debtor who is notour bankrupt, or by any creditor of a debtor who is notour bankrupt, in the Sheriff Court of the county in which the debtor has his ordinary domicile (1880 Act, secs. 7, 8). There is no requirement that the petition shall be presented within any definite period after constitution of notour bankruptcy.

A petition by the debtor himself sets forth that he is notour bankrupt, and is prepared to surrender his whole means and estate to his creditors, and prays for decree of cessio and for interim liberation or protection from imprisonment, if the debtor be subject to imprisonment. It must contain a list of all the creditors, with their names and designations and places of residence, so far as known. Evidence of notour bankruptcy must be produced.

The procedure in petitions by creditors is regulated by the Debtors Act 1880 and Act of Sederunt of 22nd December 1882. Before presenting the petition the creditor must give notice to the debtor of his intention to do so at least six and not more than fourteen days previously (Act of Sederunt 1882, sec. 1). Along with the petition there must be produced (1) a certificate of the posting or delivery of the notice; (2) evidence of notour bankruptcy.

The first order made by the sheriff on a petition for cessio is for publication in the *Gazette*, and intimation to the creditors of the proceedings, and appoints a day for the debtor to appear for examination. On or before the sixth lawful day prior to said date the debtor must lodge with the sheriff-clerk a state of his affairs and all his books, documents, and papers relating to his affairs (1880 Act, sec. 9 (1)). The sheriff's warrant is not subject to appeal. If the fact of notour bankruptcy is disputed a proof may be allowed.

The sheriff is empowered to grant warrant to take possession of bank notes, money, etc., in possession of the debtor (1880 Act, sec. 13).

First Meeting.—The procedure embraces (1) hearing and disposal by the sheriff of any objections to granting cessio; (2) public examination of the debtor; (3) granting decree of cessio and appointment of a trustee.

(1) Objections to the granting of cessio may be on the ground of defects in the proceedings, or on the ground of expediency, as *e.g.* that the petition is an abuse of the process (see Ross, 1885, 13 R. 207; Reid, 1890, 17 R. 757). Objections on expediency will not as a rule be given effect to.

(2) The examination of the bankrupt proceeds in a similar manner to an examination in sequestration. The debtor is bound to answer all pertinent questions, and to produce all books, deeds, or papers required (43 & 44 Vict. c. 34, sec. 9). Third parties may also be examined (*ibid.* sec. 10), and warrant of apprehension may be granted by the sheriff against the bankrupt or them.

(3) The decree of cessio ordains the debtor to grant a disposition *omnium bonorum* to a trustee named therein, who is appointed by the sheriff on the suggestion of the creditors represented at the meeting, or, if they do not agree, at his own hand. The sheriff's judgment granting or refusing cessio may be appealed to the Court of Session. The sheriff has a discretionary power in granting or refusing cessio, and may attach conditions to the decree, as *e.g.* that the debtor shall assign to the trustee a salary of office held by him (Simpson, 1888, 16 R. 131; Calderhead, 1890, 17 R. 1098). The sheriff may pronounce decree of cessio in absence "if the debtor fail to appear, in obedience to the citation under a process of *cessio bonorum*, at any meeting to which he has been cited, and if the sheriff be satisfied that such failure is wilful" (44 & 45 Vict. c. 22, sec. 9). Where the debtor's liabilities exceed £200, the sheriff has a discretionary power to award sequestration (*ibid.* sec. 11).

Effect of Decree of Cessio and Vesting of Estate in Trustee.—Until the debtor executes a disposition *omnium bonorum* as required by the decree, the decree operates "as an assignation of his moveables in favour of any trustee mentioned in the decree for behoof of such creditors" (43 & 44 Vict. c. 34, sec. 9 (5)). The decree operates from its date, and intimation or possession is not necessary (Gray, 1895, 22 R. 326). The decree has no effect in cutting down or equalising diligence, and the only course open to prevent a preference being obtained by a creditor who has attached moveable estate before the decree, *e.g.* by poinding, is for the other creditors individually to take steps to secure a *pari passu* ranking under the 12th section of the Bankruptcy Act 1856 (see "Notour Bankruptcy," *supra*).

The heritable estate of the debtor does not vest in the trustee until transferred to him by the disposition *omnium bonorum*. No stamp duty is exigible on the disposition.

Neither the decree of cessio nor the disposition *omnium bonorum* vests in the trustee any right to funds or estate which the bankrupt subsequently acquires, nor to funds of an alimentary character or incapable of alienation, nor the debtor's working tools or instruments of trade (Reid, 1778, Mor. 1392).

The Trustee's functions are regulated chiefly by the Act of Sederunt of 22nd December 1882. The sheriff may order the trustee to find caution or dispense therewith. The sheriff also fixes the bank for deposit of the funds of the estate. Where caution is ordered, it must be found before the decree of cessio is extracted or the disposition *omnium bonorum* granted. The Act of Sederunt of 1882 makes provision for removal of the trustee and appointment of a new trustee where necessary (secs. 18, 20). The Accountant of Court has the same powers of supervision and audit as in sequestration, and the trustee is bound at all times to give him such information regarding the cessio and transmit to him such accounts and papers as he requires (secs. 18, 19).

The trustee has power to sell the estate without special instructions from the creditors (see Clark, 1890, 17 R. 1064). He may employ a law-agent where necessary, but is not entitled to devolve his own work on such agent.

The debtor must, when required, attend on the trustee, and give him all necessary information (Act of Sederunt, 1882, sec. 16).

The sheriff may at any time, on the application of the trustee or any creditor, call a meeting of the creditors to deal with any matters specified in such application (*ibid.* sec. 15).

The trustee must keep a sederunt book, and should record therein (1) the decree of cessio; (2) the disposition *omnium bonorum;* (3) the bankrupt's examination and his state of affairs; (4) the trustee's state of affairs; (5) the trustee's accounts; (6) the receipt of creditors' claims, with dates of receipt, and the deliverances on claims and schemes of division; (7) interlocutors of the Court; (8) *Gazette* notices, circulars, and certificates, and all other documents necessary to show the management and position of the estate; (9) an abstract of the accounts.

The sheriff fixes the trustee's remuneration.

The trustee incurs personal liability on contracts or in litigations which he enters into in administering the estate. He has relief against the estate as regards obligations properly incurred by him, but not against the creditors.

After a final division of the funds the trustee may obtain a discharge from the Accountant of Court in accordance with the provisions of the Act of Sederunt of 1882, sec. 8.

Ranking of Claims and Payment of Dividends.—The procedure is regulated by the Act of Sederunt of 1882 (secs. 4, 5, and 6). Within seven days after the trustee has obtained extract of the decree of cessio, he must report to the sheriff orally at what date the estate may probably be realised and ready for division; and the sheriff then fixes time and place for the second meeting of creditors to be held in his presence. Within seven days of the sheriff's deliverance, the trustee must insert a notice in the *Gazette* (Act of Sederunt 1882, Schedule B), and post to each creditor a circular (*ibid.* Schedule C) notifying the creditors of the meeting and calling for claims. He must also notify the debtor of the meeting. Creditors must send their affidavits and claims and documents of debt to the trustee twenty-one days before the second meeting, or in the case of a subsequent dividend, fourteen days before the date fixed for payment thereof (*ibid.* sec. 7). The rules of the Bankruptcy Act 1856 apply as regards the nature and form of affidavits or claims of creditors for ranking, the valuation of securities and deductions to be made, and the documents of debt to be produced (*ibid.* sec. 6).

Ten days before the second meeting the trustee must adjudicate on the claims, and lodge with the clerk of court a list thereof with his deliverances thereon, and also post notices to creditors whose claims he has rejected in whole or part (*ibid.* sec. 8). Notice of objection to any deliverance must be given to the trustee and the creditor affected by registered letter posted three days before the second meeting (*ibid.* sec. 9). Diligence may be granted by the sheriff to recover evidence (*ibid.* sec. 10).

Second Meeting.—The sheriff receives objections to deliverances by the trustee, hears any evidence thereon, and disposes of the same (*ibid.* sec. 11), his judgment being subject to appeal (Taylor, 1888, 15 R. 313). The trustee's accounts (with the taxed account of the law-agent) are submitted and approved or adjusted, and the trustee's remuneration fixed. The sheriff may then order a dividend to be paid, or may postpone payment thereof.

The sheriff's judgment reviewing the trustee's deliverance on a claim may be appealed to the Court of Session (Taylor, 1888, 15 R. 313).

If before the date of the meeting it is apparent to the trustee that there will be no funds for division, he reports the fact verbally to the sheriff, who may thereupon in writing dispense with deliverances on claims and the making up of a list of ranking (Act of Sederunt, sec. 12). This may be done when the trustee applies to the sheriff to fix the date of the second meeting.

If at any time subsequent to the second meeting there are funds available for paying a dividend, the trustee applies verbally to the sheriff to fix a date for payment thereof, sends notice thereafter to the creditors, and remodels the state of ranking so far as that may be necessary, subject to the approval of the sheriff. The sheriff may proceed with or without notice to the creditors, and with or without any meeting of creditors (Act of Sederunt, secs. 13, 14).

Discharge of Bankrupt.—Prior to 1881 a debtor under cessio obtained no discharge short of paying all his creditors twenty shillings in the pound. The Bankruptcy and Cessio Act 1881 (44 & 45 Vict. c. 22) made provision for discharge on conditions virtually the same as under sequestration. The periods at which application for discharge may be made and the consents of creditors requisite are the same as for discharge on dividend in sequestration; and there is a corresponding provision under the 1881 Act that discharges shall not be granted unless five shillings in the pound shall have been made or secured, or unless the failure to pay five shillings in the pound has, in the opinion of the sheriff, arisen from circumstances for which the debtor cannot justly be held responsible (44 & 45 Vict. c. 22, sec. 7).

The sheriff's deliverance granting, postponing, or refusing a discharge in cessio is final, and not subject to review (44 & 45 Vict. c. 22, sec. 5).

Appeal in Cessio.—The right of appeal is regulated by the rules enacted in the Sheriff Court Act 1876 (secs. 24-29), and the Sheriff Court Act 1853 (sec. 24), regarding appeals to the Sheriff or Court of Session in ordinary Sheriff Court actions (see 43 & 44 Vict. c. 34, sec. 9 (4)). It has accordingly been held that the sheriff's deliverance under section 9 (1) of the Debtors Act 1880, finding that there is *prima facie* evidence of notour bankruptcy, and ordaining the debtor to appear for examination, etc., is not appealable (Adam, 1883, 10 R. 670). In ordinary course the sheriff's deliverance granting or refusing cessio will be the first appealable interlocutor. The competency, in respect of value, of an appeal to the Court of Session regarding a creditor's claim is determined by the amount of the debt alleged to be due in the creditor's affidavit (Henderson, 1896, 23 R. 659).

No fee fund dues or other dues of court are payable in respect of any proceedings under the Cessio Acts; nor is any stamp duty or other Government duty exigible in respect of any disposition which a debtor is required or decerned to execute in terms thereof (43 & 44 Vict. c. 34, sec. 11).

5. Trust Deed for Creditors

A trust deed for creditors is a deed by which a debtor conveys his estate to a trustee, to hold it against the granter for behoof of his creditors, and for distribution among them towards satisfaction of their claims. It is of the essence of the trust that the trustee hold the estate as representative of the creditors, and not merely as mandatory or agent of the debtor. A trust deed for creditors is reducible under the Act 1696, c. 5, if granted after notour bankruptcy, or within sixty days prior thereto, and also under the second part of the Act 1621, c. 18, if it defeats lawful diligence already begun; but otherwise it will stand good, and available to exclude preferences by diligence at the instance of non-acceding as well as acceding creditors if

it be granted by the debtor for behoof of all his creditors equally, and contain no extraordinary clauses, and if the estate be reduced into possession by the trustee. In order to exclude diligence of non-acceding creditors, the trustee's title must be completed by infeftment, intimation, etc. Arrestments in the hands of the trustee under an effectual trust will only attach any surplus after satisfying the trust purposes.

A trust deed for creditors is liable to be superseded at any time by sequestration at the instance of a non-acceding creditor. It may be superseded by cessio; but the sheriff is entitled to exercise a discretion in awarding cessio (43 & 44 Vict. sec. 9 (3)).

The essential purposes of a trust deed for creditors are—(1) realisation; (2) payment of the creditors according to their legal rights and preferences; (3) retrocession of the debtor in any surplus that may remain. Provisions making the trustee judge of the creditors' claims, applying the rules of the Bankruptcy Act, or providing for the debtor's discharge are not, apart from accession, binding on creditors, nor do they invalidate the trust.

Accession to the trust deed by a creditor may be proved by writing, or by the oath of the creditor. It may be also proved *rebus ipsis et factis*, as by attending a meeting and acquiescing in a resolution to accede, or attending meetings from which acquiescence may be inferred; but a creditor will not, as a rule, be held bound by extraordinary conditions, such as consent to the bankrupt's discharge on dividend, without proof of accession in writing. Accession is not to be inferred from mere knowledge of the trust, or lodging a claim with the trustee, or allowing decree to pass in name of the trustee against the creditor for a debt due to the truster.

It is an implied condition of accession that the creditors be treated on a footing of equality, no advantage being given to particular creditors beyond their legal rights. It is also provisional on all the other creditors acceding, unless the contrary be expressed.

The trustee has no title to challenge alienations and preferences which the debtor may have made, unless (1) the trust deed contains power; and (2) creditors having themselves a title to challenge accede to it.

The trustee adjudicates on the claims, and ranks the creditors according to their rights and preferences. He may call on them to constitute their claims. A multiplepoinding is not, as a rule, a competent proceeding for settling the division of the estate.

The trustee is personally liable on contracts entered into in administering the estate, and on contracts of the debtor which he adopts, and for expenses of litigation which he begins or takes up. Where he litigates unsuccessfully with a creditor claiming a ranking, he cannot operate his relief against the estate so as to diminish that creditor's dividend.

Unless a remuneration is provided in the trust deed, the trustee has no claim therefor. He cannot charge professional fees for work done by him. For outlays he has a lien over the estate in event of a sequestration (Thomson, 1880, 7 R. 1035; Salaman, 1900, 3 F. 298).

The provisions of the Trusts Acts as to appointment of new trustees by the Court apply to trusts for creditors (Royal Bank, 1893, 20 R. 741).

The debtor is not entitled to a discharge except to the extent of dividends paid, unless so far as the trust deed stipulates therefor and creditors accede to the condition.

6. Composition Contract

A composition contract is an agreement between a debtor and his creditors whereby the latter agree to accept a portion of their debts in full

thereof. The terms are a matter of bargain. The more usual form is for the debtor to grant bills to the respective creditors for instalments of composition, with or without additional names as cautioners.

In the absence of express agreement, it is an essential condition of a composition contract that all the creditors be treated with equality, according to their respective legal rights and preferences, and the violation of this condition gives right to resile. It is, similarly, an essential condition that all the creditors accede to the contract (Bell's *Com.* ii. 400). The contract may be voided if it have been induced by material misrepresentation by the debtor as to the amount of his estate.

The acceptance of a composition settlement should be in writing. It has not been decided that it can be proved by parole, and the competency of this course seems open to much doubt.

Failure to pay an agreed-on composition has the effect of reviving the original debt (unless the creditor has unconditionally discharged it); and a creditor is not bound to deliver up his document of debt until the composition has been fully paid.

All secret preferences or advantages given by the debtor to particular creditors to secure their accession are struck at, and no action lies for their enforcement, nor can the debtor sue for restoration if he have paid any preference voluntarily (Bell's *Com.* ii. 399). But after discharge the debtor may pay any creditor in full if he pleases.

7. Fraudulent Bankruptcy

At common law a debtor is guilty of a crime if he secretes or puts away his property to cheat his creditors (Hume, i. 509; Macdonald on *Criminal Law*, 96). The punishment is now penal servitude or imprisonment.

The Bankruptcy Act 1856 (19 & 20 Vict. c. 79, sec. 178) renders liable to prosecution any person who is "guilty of wilful falsehood in any oath" made in pursuance of the Act; and also contains provision for proceedings against the bankrupt, trustee, or commissioners for fraudulent conduct, malversation or misconduct (sec. 162). The Debtors Act 1880 also renders liable to prosecution any creditor under a petition for sequestration or cessio or disposition *omnium bonorum* who wilfully and fraudulently makes any false claim, proof, affidavit, declaration, or statement of account.

By section 13 of the Debtors Act 1880 it is enacted that a debtor under sequestration or cessio shall be guilty of a crime and offence and liable to punishment as there mentioned—

(A) In each of the following cases unless he prove no intent to defraud:—

1. If he does not, to the best of his knowledge and belief, fully and truly disclose the state of his affairs in terms of the Bankruptcy (Scotland) Act 1856, or the Cessio Acts, as the case may be.
2. If he does not deliver up to the trustee all his property, and all books, documents, papers, and writings relating to his property or affairs, which are in his custody or under his control, and which he is required by law to deliver up, or if he does not deal with and dispose of the same according to the directions of the trustee.
3. If after the presentation of the petition for sequestration or cessio, or within four months next before such presentation, he conceals any part of his property, or conceals, destroys, or mutilates, or is privy to the concealment, destruction, or mutilation of any book, document, paper, or writing relating to his property or affairs.
4. If after, or within the time above specified, he makes or is privy to the

making of any false entry in, or otherwise falsifying any book, document, paper, or writing affecting or relating to his property or affairs.

5. If within four months next before the presentation of the petition for sequestration or cessio he pawns, pledges, or disposes of, otherwise than in the ordinary way of trade, any property which he has obtained on credit and has not paid for.

6. If, being indebted to an amount exceeding two hundred pounds at the date of the presentation of the petition for sequestration or cessio, as the case may be, he has not, for three years next before such date, kept such books or accounts as, according to the usual course of any trade or business in which he may have been engaged, are necessary to exhibit or explain his transactions.

(B) In each of the cases following:—

1. If, knowing or believing that a false claim has been made by any person under the sequestration, he fails for the period of a month from the time of his acquiring such knowledge or belief to inform the trustee thereof.

2. If, after the presentation of the petition for sequestration or cessio, or at any meeting of his creditors within four months next before such presentation, he attempts to account for any part of his property by fictitious losses or expenses.

3. If, within four months next before the presentation of the petition for sequestration or cessio, he, by any false representation or other fraud, has obtained any property on credit and has not paid for the same.

4. If, after the date of granting sequestration or cessio, or within four months prior thereto, he absconds from Scotland, or makes preparations to abscond for the purpose of avoiding examination or other proceedings at the instance of his creditors, or taking with him property which ought by law to be divided amongst his creditors to the amount of twenty pounds or upwards, or if he fails, having no reasonable excuse (after receiving due notice), to attend the public examination appointed by the Lord Ordinary or the Sheriff, or to submit himself for examination in terms of the statutes.

5. If, being insolvent, and with intent to defraud his creditors, or any of them, he makes or causes to be made any gift, delivery, or transfer of or any charge on or affecting his property.

It is the duty of the trustee to report offences under the Act to the presiding judge (43 & 44 Vict. c. 34, sec. 15).

On the subject of this article, see BELL's *Commentaries;* GOUDY on *Bankruptcy;* MURDOCH on *Bankruptcy.*

W. J. CULLEN.

Banks in Great Britain.—There is submitted herewith a statement giving certain particulars in regard to the banks of Great Britain and of the colonial and foreign banks having offices in London.

From the statement it will be observed that the number of banks and the number of branches which these banks have are as follows:—

	Number of Banks.	Number of Branches.
England and Wales (including Isle of Man and Channel Islands)	74	4048
Scotland	11	1100
Ireland	9	652
Colonial	30	1818
Foreign	27	566
	151	8184

The subscribed capital of the joint-stock banks in the United Kingdom amounts to £275,572,647, which is made up as follows:—

England (including Isle of Man and Channel Islands)	£220,160,276
Scotland	29,163,140
Ireland	26,249,231
	£275,572,647

The paid-up capital amounts to £77,644,563, as follows:—

England (including Isle of Man and Channel Islands)	£61,092,542
Scotland	9,316,070
Ireland	7,235,951
	£77,644,563

The total capital callable and reserved, therefore, amounts to £197,928,084, as follows:—

England (including Isle of Man and Channel Islands)	£159,067,734
Scotland	19,847,070
Ireland	19,013,280
Capital callable and reserved	£197,928,084

Total capital subscribed	£275,572,647	
Total paid-up capital	77,644,563	
		£197,928,084

It will be observed that the uncalled capital is nearly three-fourths of the amount subscribed.

JOINT-STOCK BANKS OF ENGLAND AND WALES

Name of Bank.	No. of Branches and Sub-branches.	Amount Paid up per Share.	Liability per Share.		Capital Subscribed.	Capital Paid up.
			Total.	Amount Reserved.		
		£	£	£	£	£
Bank of England	11	Stock	...	...	14,553,000	14,553,000
Bank of Liverpool	74	12½	87½	60	8,000,000	1,000,000
Bank of Whitehaven	8	10	20	Nil	295,590	98,530
Barclay and Co.	309	8	12	Nil	6,090,000	2,436,000
Baring Brothers and Co.	1	5	Nil	Nil	25,000	25,000
Do. 5 per cent Pref.	...	100	Nil	Nil	500,000	500,000
Do. 6 per cent 2nd Pref.	...	100	Nil	Nil	500,000	500,000
Birmingham, District and Counties Banking Co.	82	4	16	10	3,062,500	612,500
Bolitho Williams, Foster, and Co.	23	10	40	25	1,500,000	300,000
Bradford Banking Co.	None	3	7	5	1,360,000	408,000
Bradford Commercial Joint-Stock Bank	None	25	75	50	1,300,000	325,000
Bradford District Bank	4	4	6	4	860,000	344,000
Bradford Old Bank	23	20	30	Nil	1,250,000	500,000
British Mutual Banking Co.	None	1½	3½	Nil	200,000	67,136
Capital and Counties Bank	193	10	40	30	6,050,000	1,210,000
Carlisle and Cumberland Banking Co.	8	5	15	10	400,000	100,000
Civil Service Bank	None	¼	¼	¼	100,000	24,104
Cornish Bank	16	15 and 25	35 and 25	...	500,000	150,600
Coutts and Co.	None	Stock	Unlimited		600,000	600,000
Craven Bank	40	7	23	8	900,000	210,000
Crompton and Evans Union	41	4	16	16	1,250,000	250,000
Devon and Cornwall Banking Co.	55	20 and 15	80-85	50	1,250,000	243,750
German Bank of London	None	10	Nil	Nil	400,000	400,000
Glyn, Mills, Currie, and Co.	None	Stock	Unlimited		1,000,000	1,000,000
Grant and Maddison	11	16	34	25	350,000	112,000
Halifax & Huddersfield Union	7	10	30	20	1,200,000	300,000
Halifax Commercial Banking Co.	11	10	10	10	400,000	200,000
Halifax Joint-Stock Banking Co.	17	10	15	10	750,000	300,000
Carry forward	934				54,646,090	26,769,620

JOINT-STOCK BANKS OF ENGLAND AND WALES—*continued*

Name of Bank.	No. of Branches and Sub-branches.	Amount Paid up per Share.	Liability per Share.		Capital Subscribed.	Capital Paid up.
			Total.	Amount Reserved.		
		£	£	£	£	£
Brought forward .	934				54,646,090	26,769,620
International Bank of London	None	15	5	5	400,000	300,000
Knaresboro' and Claro . .	3	5	20	12½	213,700	42,740
Lancashire and Yorkshire Bank	63	10	10	Nil	1,200,000	600,000
Lancaster Banking Co. .	51	5½	29½	10	1,375,000	302,500
Lincoln and Lindsey Banking Co.	21	70	130	100	250,000	87,500
Do. do., New		17½	32½	25	214,650	75,128
Lloyds Bank . . .	343	8	42	37½	18,200,000	2,912,000
London and County Banking Co.	218	20	60	40	8,000,000	2,000,000
London and Hanseatic Bank	None	10	10	Nil	800,000	400,000
London and Provincial Bank	155	5	5	Nil	1,600,000	800,000
London and South-Western Bank	143	20	30	Nil	2,000,000	800,000
London and Westminster Bank	34	20	80	Nil	14,000,000	2,800,000
London and Yorkshire Bank	45	2½	7	5	1,235,000	325,000
London City and Midland .	428	12½	47½	35	14,400,000	3,000,000
London Joint-Stock Bank .	37	15	85	50	12,000,000	1,800,000
London Trading Bank . .	None	Various	Various		61,900	27,661
Manchester and County Bank	82	16	84	75	5,460,200	873,632
Manchester and Liverpool District	95	10	50	40	7,500,000	1,250,000
Martin's	10	10	10	10	1,000,000	500,000
Mercantile of Lancashire .	41	3-10	17-10	10	1,000,000	239,200
Mercantile of London . .	None	10-5	Nil 5	Nil	53,791	37,791
Merchant Banking Co. .	None	4	5	Nil	675,000	300,000
Metropolitan (of England and Wales)	128	5	45	25	5,000,000	500,000
Middlesex Banking Co. .	...	Various	...	...	50,000	26,640
Midland Counties District .	27	5	25	15	750,000	125,000
National Provincial Bank of England	202	10½	64½	50	15,900,000	420,000
		12	48	40		2,580,000
Northamptonshire Union Bank	21	11	19	10	1,080,000	396,000
North-Eastern Banking Co. .	78	6	14	Nil	1,071,300	321,390
North and South Wales Bank	94	10	30	30	3,000,000	719,986
Nottingham and Nottinghamshire Banking Co.	19	5	15	10	1,300,000	322,975
Nottingham Joint-Stock Bank	25	10	40	25	1,000,000	200,000
Palatine Bank	3	3½	16½	10	500,000	87,500
Parr's Bank	153	20	80	60	8,542,500	1,708,500
Prescott, Dimsdale, and Co.	22	8	17	10	1,571,575	502,904
Sheffield Banking Co. . .	11	17½	32½	Nil	1,154,500	404,075
Sheffield and Rotherham Banking Co.	10	8	42	25	1,600,000	256,000
Sheffield and Hallam Bank .	10	5	15	...	1,200,000	300,000
Stamford, Spalding, and Boston Banking Co.	20	10	20	10	883,770	294,590
Stuckey's Banking Co. .	41	12	48	48	2,040,000	408,000
Union Bank of London .	52	15½	84½	50	11,000,000	1,705,000
Union Bank of Manchester .	64	11	14	Nil	1,250,000	550,000
Wakefield and Barnsley Union Bank	8	13½	36½	25	500,000	135,000
West Riding Union Banking Co.	9	10	40	25	1,580,300	316,060
Whitehaven Joint-Stock Bank	7	7½	42½	25	401,000	60,150
Williams Deacon . . .	77	8	42	30	6,250,000	1,000,000
Wilts and Dorset Banking Co.	99	10	40	35	3,250,000	650,000
York City and County Bank	157	3	7	4	2,600,000	780,000
	4040				219,760,276	61,012,542

JOINT-STOCK BANKS OF ENGLAND AND WALES—*continued*

Name of Bank.	No. of Branches and Sub-branches.	Amount Paid up per Share.	Liability per Share.		Capital Subscribed.	Capital Paid up.
			Total.	Amount Reserved.		
		£	£	£	£	£
Brought forward .	4040				219,760,276	61,012,542
Guernsey Banking Co. . .	1	10	40	25	250,000	50,000
Isle of Man Banking Co., Ld.	7	2	8	1⅓	150,000	30,000
	4048				220,160,276	61,092,542

JOINT-STOCK BANKS OF SCOTLAND

Name of Bank.	No. of Branches and Sub-branches.	Amount Paid up per Share.	Liability per Share.		Capital Subscribed.	Capital Paid up.
			Total.	Amount Reserved.		
		£	£	£	£	£
Bank of Scotland . .	125	Stock	50	...	1,875,000	1,250,000
British Linen Company Bank	128	Stock	Nil	Nil	1,250,000	1,250,000
Caledonian Banking Co., Ld.	27	2½	10	7½	750,000	150,000
Clydesdale Bank, Ld. . .	125	10	40	40	5,000,000	1,000,000
Commercial Bank of Scotland	147	20	80	40	5,000,000	1,000,000
Mercantile Bank of Scotland	4	½	½	Nil	28,140	14,070
National Bank of Scotland, Ld.	115	Stock	400	300	5,000,000	1,000,000
North of Scotland Bank, Ld.	76	4	16	12	2,000,000	400,000
Royal Bank of Scotland .	141	Stock	Nil	Nil	2,000,000	2,000,000
Town and County Banking Co., Ld.	66	7	28	15	1,260,000	252,000
Union Bank of Scotland, Ld.	146	10	40	40	5,000,000	1,000,000
	1100				29,163,140	9,316,070

JOINT-STOCK BANKS OF IRELAND

Name of Bank.	No. of Branches and Sub-branches.	Amount Paid up per Share.	Liability per Share.		Capital Subscribed.	Capital Paid up.
			Total.	Amount Reserved.		
		£	£	£	£	£
Bank of Ireland (Capital £3,000,000 Irish)	74	Stock	All	Paid	2,769,231	2,769,231
Belfast Banking Co. . .	71	25	100	75	625,000	125,000
Do. do., New .	...	25	100	75	1,375,000	275,000
Do. do. . .	...	...	...	...	400,000	26,720
Hibernian Bank . . .	67	5	15	10	2,000,000	500,000
Munster and Leinster Bank .	56	2	3	2	500,000	200,000
National Bank . . .	112	10	40	33⅓	7,500,000	1,500,000
Northern Banking Co.—A Do. do., B Shares	53	10	40	30	1,750,000 750,000	350,000 150,000
Provincial Bank of Ireland Do. do., New	73	12½ 10	87½ 10	50 10	4,000,000 80,000	500,000 40,000
Royal Bank of Ireland . .	8	10	40	30	1,500,000	300,000
Ulster Bank	138	2½	12½	10	3,000,000	500,000
	652				26,249,231	7,235,951

Colonial Joint-Stock Banks with London Offices

Name of Bank.	No. of Branches and Sub-branches.	Amount Paid up per Share.	Liability per Share.		Capital Subscribed.	Capital Paid up.
			Total.	Amount Reserved.		
		£	£	£	£	£
African Banking Corporation, Ltd.	36	5	5	5	800,000	400,000
Australian Joint-Stock Bank	71	7½	2½	Nil	1,566,020	1,168,042
Bank of Adelaide, Ltd.	33	4	6	5	500,000	400,000
Bank of Africa, Ltd.	49	6¼	12½	Nil	2,250,000	750,000
Bank of Australasia	154	40	40	40	1,600,000	1,600,000
Bank of British N. America	23	50	Nil	Nil	1,000,000	1,000,000
Bank of British W. Africa	8	4	6	1	116,800	46,720
Bank of Calcutta (Rs. 15 = £1)	None	Rs. 50	Rs. 50	Nil	100,000	66,666
Bank of Mauritius	1	10	Nil	Nil	125,550	125,550
Bank of Montreal	51	$200	$200	$200	2,465,754	2,465,754
Bank of New South Wales	202	20	20	20	2,000,000	2,000,000
Bank of New Zealand	123	3⅛	3⅛	3⅛	1,000,000	427,320
Do. do., 4 per cent Guaranteed Stock	...	Stock	Nil	Nil	2,000,000	2,000,000
Bank of Victoria	66	5	5	5	2,400,000	1,061,250
Do. Preference Shares		10	Nil	Nil	416,760	416,760
Canadian Bank of Commerce	74	$50	$50	$50	1,600,000	1,600,000
Chr. of India, Austria, and China	24	20	20	20	800,000	800,000
Colonial Bank	13	6	14	14	2,000,000	600,000
Commercial Banking Co. of Sydney	139	12½	12½	12½	1,000,000	1,000,000
Commercial Bank of Australia, Ltd.	104	¼	Nil	Nil	1,890,410	1,132,762
Do. Preference Shares		10	Nil	Nil	2,117,230	2,117,230
Delhi and London Bank, Ltd.	5	25	Nil	Nil	337,625	337,625
England, Scotland, and Aust. Bank	85	12½	12½	12½	1,078,875	539,437
Do. do., Perp. Stock	...	Stock	Nil	Nil	2,732,525	2,732,525
London Bank of Australia	42	15	15	12½	1,473,090	743,985
Do. Preference Shares		10	Nil	Nil	171,930	171,930
Mercantile Bank of India, Ltd.	10	12½	12½	6¼	375,000	187,500
Do. do., B Shares		12½	Nil	Nil	750,000	375,000
Natal Bank, Ltd.—A	22	5	5	5	258,840	129,420
Do. do., B Shares		2½	7½	5	619,270	154,817
National Bank of Australasia	131	5	3	3	2,384,880	1,192,440
Do. Preference Shares		10	Nil	Nil	305,780	305,780
National Bank of India, Ltd.	18	12½	12½	...	1,000,000	500,000
National Bank of New Zealand, Ltd.	34	2½	5	Nil	750,000	250,000
Queensland National Bank, Ltd.	54	3	2	...	...	413,036
Do. Insc. Deposit Stock		...	...	...	...	3,116,621
Royal Bank of Queensland	17	6½	2½	...	...	444,962
Standard of South Africa, Ltd.	112	25	75	Nil	5,000,000	1,250,000
Union Bank of Australia, Ltd.	117	25	50	50	4,500,000	1,500,000
	1818				49,486,339	35,523,132

FOREIGN JOINT-STOCK BANKS WITH LONDON OFFICES

Name of Bank.	No. of Branches and Sub-branches.	Amount Paid up per Share.	Liability per Share.		Capital Subscribed.	Capital Paid up.
			Total.	Amount Reserved.		
		£	£	£	£	£
Anglo-Austrian Bank	7	10	Nil	Nil	2,500,000	2,000,000
Anglo-Californian Bank, Ltd.	1	10	10	...	599,400	299,700
Anglo-Egyptian Bank	5	5	10	...	1,200,000	400,000
Anglo-Foreign Banking Co., Ltd.	None	7	Nil	Nil	420,000	420,000
Anglo-Italian Bank, Ltd.	None	5	Nil	Nil	50,000	50,000
Bank of Egypt	4	12½	12½	12½	750,000	375,000
Bank of Roumania	None	6	14	...	1,000,000	300,000
Bank of Tarapaca and Argentina	16	5	5	Nil	1,500,000	750,000
British Bank of South America	9	10	10	Nil	1,000,000	500,000
Comptoir Nat. d' Escompte de Paris	129	20	Fully	paid	6,000,000	6,000,000
Crédit Lyonnais	220	20	Fully	paid	10,000,000	10,000,000
Deutsche Bank, Berlin	8	30 and 60	Nil	Nil	7,500,000	7,500,000
Disconto Gesellschaft	2	30-60	Fully	paid	6,500,000	6,500,000
Dresdner Bank	14	30-60	Fully	paid	6,500,000	6,500,000
Hong-Kong and Shanghai Banking Corporation (at 2s. per $)	26	$125	$125	$125	1,000,000	1,000,000
Imperial of Persia	8	6½	10	10	650,000	650,000
Imperial Ottoman Bank	27	10	10	Nil	10,000,000	5,000,000
Ionian Bank	6	25	25	...	315,507	315,507
London and Brazilian Bank, Ltd.	15	10	10	Nil	1,500,000	750,000
London and River Plate Bank, Ltd.	13	15	10	Nil	1,500,000	900,000
London and San Francisco Bank, Ltd.	4	10	Nil	Nil	280,000	280,000
London Bank of Mexico and South America, Ltd.	None	5	5	Nil	800,000	400,000
London, Paris, and American, Ltd.	1	16	4	Nil	500,000	400,000
National Bank of China, Ltd. (at 2s. per $)	2	8	2	Nil	...	216,249
National of Egypt	6	10	Fully	paid	1,500,000	1,500,000
National Bank of South African Republic	42	10	Nil	Nil	1,100,000	1,100,000
Yokohama Specie Bank, Ltd.	1	12½	4⅛	...	3,000,000	3,000,000
	566				67,664,907	57,106,456

Bargain means an agreement between two persons, generally with regard to sale and purchase. The term, as used in Scots law, is synonymous with agreement or contract, and has no specialised meaning as in England, connecting it with the law of sale.

Bargain (Stock Exchange).—Bargain on the Stock Exchange is the term applied to a purchase or sale of a security.

Barter.—Barter is the exchange of commodities effected directly without the intervention of money as in primitive states of society. Money, as the medium of exchange, does away with the inconveniences arising through barter, and these inconveniences, as given by Jevons, are,

shortly, (1) want of coincidence; (2) want of a measure of value; and (3) want of means of subdivision.

B/E.—Contraction for Bill of Exchange.

"Bear."—This is the name given on the Stock Exchange to persons who have sold securities in the hope that these securities will fall in value, when they will buy back and thus make a profit. Such persons very seldom own the securities they sell, but having information that such securities will fall in price, they contract to sell, and the mere fact that they contract to sell makes them buyers at the same time, because before they can fulfil their contract they must buy the securities.

It very often happens that the persons to whom the "bears" have sold the securities demand delivery, but as the "bears" have not got the securities, and perhaps never had them, they are forced to buy them somewhere in order to fulfil their contract with these buyers.

When such an event takes place, the value of the securities, owing to the great demand of the "bears," may cause the value of such securities to rise far in excess of their real worth.

Bearer.—Certain negotiable instruments are sometimes drawn payable to bearer or to a named payee or bearer. The mere fact of possession of such an instrument (commonly promissory notes or cheques) entitles the presenter to payment without the written authority or endorsement of any named payee.

Bearer Securities.—Bonds and shares to bearer are securities which are negotiable on their face, that is, possession is sufficient to identify the owner. The title of bearers of securities passes from holder to holder, whereas in the case of ordinary registered securities there is no legal title until the owner has had his name placed on the register of the company in which he has acquired the shares.

Bequest, Power of.—The Roman law permitted three-fourths of the inheritance to be willed away from the next of kin. In England there is now absolute freedom of bequest, but the law of Scotland gives the widow one-half of the moveable property if there are no children, and one-third if there are children. One-third if there be a widow, one-half if there be no widow, is reserved for the children. It is only the balance known as the dead's part, which may be bequeathed.

Betterment.—The improvement of property. The expression is an American one, and has been adopted in connection with the principle that persons benefiting by public expenditure should contribute to such expenditure to the extent of the increased value of their property, whether that improvement was effected specially for the benefit of the property by the local authority, or was purely the result of some extraneous agency not having to do with the improvement of the special property concerned. The principle is chiefly advocated in connection with taxation for local purposes. In connection with this matter the evidence taken by the Select Committee on the London Streets (Strand Improvement Bill) is highly instructive.

Bill-Broking.—Originally a bill-broker was, as the name implies, an agent between buyer and seller, who received a small commission for procuring bills for the buyer, but incurred no liability in respect of the transaction. At the present time bill-brokers are more allied to bankers,

receiving from bankers and others, large deposits which they invest in bills of exchange, agreeing to repay on demand or on short notice. They also sell bills, but at the same time guarantee the bills sold to the buyer. Another branch of the business consists in the negotiation of bills drawn by British houses on firms abroad in payment of goods exported from this country. These bills are drawn in the money of the country where they are payable, and they have to be turned into English money for the convenience of the merchant who sells them. The bill-broker, after a careful calculation, and taking into account the currency of the bill, the rate of exchange ruling and fluctuations of that rate at the maturity of the bill, fixes a price at which he purchases the bill, and takes all risks except that of non-payment. As a rule foreign business is confined to a special class of bill-brokers who are known by the name of foreign brokers. Bills are much less used now than they were formerly. One of the reasons for this is that profits are now so small that those unable to pay cash are unable to compete with those who can.

Bill of Lading.—A document by which the master or other agent of the ship-owner on his behalf acknowledges the receipt of certain goods, and undertakes to deliver them to the consignee at the port. of destination, against the payment of freight and subject to certain contingencies releasing him from liability. The consignee may be named in the bill of lading, or it may state that the goods are to be delivered to the order of the shipper. In the latter case the goods are delivered to the person to whom the bill of lading is indorsed or to a subsequent indorsee. Bills of lading are sometimes in sets of three, which are forwarded by different mails so that one may serve in case of the loss of the others.

Bill of Sale.—A document assigning the property in personal chattels. Such assignments are usually made by way of security for a loan. A bill of sale must be drawn up in the statutory form and registered in the Central Office of the High Court within seven days of the date of the issue to be effectual as against execution creditors. A bill of sale must be renewed every five years. A bill of sale given in security for a payment of a sum under £30 is not valid.

Bill Stamps.—The stamp duty payable on bills of exchange is regulated by the Stamp Act of 1891. Inland notes of all kinds, and inland bills otherwise than on demand, must be drawn upon paper impressed with the appropriate stamp duty, and cannot be stamped after execution. The following are the stamp duties payable:—

Where the amount or value of the money for which the bill or note is drawn does not exceed £5			£0	0	1
Exceeding £5, not exceeding	10		0	0	2
„ 10, „	25		0	0	3
„ 25, „	50		0	0	6
„ 50, „	75		0	0	9
„ 75, „	100		0	1	0
For every £100, and also any fractional part of such amount or value			0	1	0

Bills of exchange payable on demand must be stamped with a penny stamp. But promissory notes on demand are subject to *ad valorem* duty at the above rates.

Bills of Exchange.

Introduction	370	Dishonour by Non-Payment	382
Definition and Essentials	370	Noting and Protest	383
Parties	371	Liability of Parties	385
Negotiability	371	Sum for which Parties are liable	387
Sum Payable	371	Discharge of Bill	387
Time of Payment and Days of Grace	372	Acceptance for Honour	389
Referee in Case of Need	373	Payment for Honour	390
Acceptance	373	Lost Bills and Bills in a Set	391
Delivery	374	Conflict of Laws	391
Capacity and Authority of Parties	374	"Good Faith," Signature, and Computation of Time	392
Forged and Procuration Signatures	375	Stamp Duty	392
Consideration and Holder for Value	375	Accommodation Bill	393
Holder in due Course	376	Recovery of Amount of Bills in Scotland—	
Negotiation	376	(1) *Summary Diligence*	394
Indorsation	377	(2) *Evidence in Judicial Proceedings on Bills*	394
Rights, etc., of Holder	378	Limitation and Prescription of Action on Bills	395
Presentment for Acceptance	379	Bills by Companies	396
Presentment for Payment	380		

Introduction.—The origin of these documents, perhaps the most familiar and important of all our instruments of commerce, is, like that of many other inventions in daily use, involved in obscurity, and no opinion can be expressed with any confidence as to when or by whom they were first used as a circulating medium representative of money. Bills of exchange have, from time immemorial, enjoyed peculiar and extensive privileges, conferred on them partly by express enactment, but mainly perhaps by custom and the "law merchant," which is a body of law capable of indefinite expansion and enlargement, consisting of such usages and customs of merchants and traders in the different departments of commerce as have been ratified by judicial decision and embodied in the law of the land.

The law relating to bills of exchange, cheques (*q.v.*), and promissory notes is now chiefly governed by the Bills of Exchange Act 1882, which codified and to some extent modified the existing law, and with some slight and, save in one instance (for which see "Liabilities of Parties," *infra*), unimportant exceptions, assimilated the laws of the three kingdoms. The rules of the common law, however, in so far as not inconsistent with its express provisions, continue to apply. In considering questions, therefore, affecting bills of exchange, and in determining questions of liability of parties to them, the language of the statute must receive its natural meaning, uninfluenced by any consideration derived from the previous state of the law; and unless the statute provides that the law existing at the date of its passing is to remain unaltered, an appeal to earlier decisions, except in so far as they are illustrative or declaratory of its meaning, can only be justified on some special ground (*per* Lord Russell, C.J., in *Lewis* v. *Clay*, 1897, 14 T.L.R. 149).

Definition and Essentials.—A bill of exchange is an unconditional order addressed by one person, who is called the drawer, to another

who is called the drawee (and, after acceptance, the acceptor), signed by, or with the authority of, the person giving it (see sec. 91 (1)), requiring the person addressed to pay on demand, or at a fixed or determinable future time, a sum certain in money to, or to the order of, a specified person, or to bearer. An instrument which does not comply with these conditions, or which orders any act to be done in addition to the payment of money, is not a bill of exchange. But a writing which does not originally contain these essentials may yet be capable of being made a bill of exchange (see secs. 18, 20), and, in any case, of being enforced as a document of debt, though not entitled to the special privileges of a bill (Brice, 1878, L.R. 3 Q.B.D. 569, C.A.). The order to pay must be unconditional, but an unqualified order to pay, coupled with an indication of a particular fund out of which the drawee is to reimburse himself, is valid (*re* Boyse, 1886, 33 Ch. D. 612). A bill need not be dated, nor specify that value was given for it, nor contain the name of the place where it is drawn or is payable. An inland bill is one which is, or on the face of it purports to be, both drawn and payable within the British Isles, even although actually accepted abroad or accepted payable abroad (sec. 72 (2)), or drawn within the British Isles upon some person resident therein. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

THE PARTIES.—The drawer (except in accommodation bills) is the creditor in the transaction, as the drawee or acceptor is the debtor; but the drawer and payee or the drawee and payee may be the same person (see sec. 5). Where the drawer and drawee are the same person (as in the case of a person drawing a bill on himself or on a firm of which he is sole partner), or where the drawee is a fictitious person, or a person unable to contract, the holder may treat it as a promissory note. The drawee must be named or indicated with reasonable certainty, as, for example, by his official title. That is to say, the bill must be addressed to some particular person or persons; and the mere acceptance of a bill does not supply the want of the drawee's name. Any one, however, in possession of a bill in which the drawee's name has been omitted may supply the deficiency. There may be two or more drawees named, but they must not be named alternatively or in succession (*vide* sec. 15). It is also essential that a bill contains the payee's name, if it be not payable to bearer; but, as in the case of the drawee's name, any person in possession may fill it in if a space has been left for the purpose. The bill may contain the names of several payees to whom it may be made payable jointly, or it may be made payable in the alternative to one of two, or one or some, of several payees, or to the holder of an office for the time being. Where the payee is fictitious to the knowledge of a person sought to be charged on the bill, or inserted by way of pretence merely, without any intention that payment shall be made in conformity therewith (Vagliano, 1891, L.R., A.C. 107), the bill may be treated as payable to bearer, even although the drawer believes and intends the bill to be payable to the order of a real person.

NEGOTIABILITY. — A bill is negotiable unless it contains words unequivocally prohibiting transfer or indicating an intention that it shall not be transferable (see Decroix, 1891, Ap. Ca. 520). A bill is payable to order unless it is expressed as payable to bearer, or if the last endorsement be an endorsement in blank.

THE SUM PAYABLE must be a sum certain in money, and money only. It may, however, be required to be paid with interest or in instalments, in which case the rate of interest and the amounts of the instalments

and the dates when they are payable must be stated, or according to an indicated rate of exchange or a rate ascertainable from the terms of the bill (see "CHEQUES"). The sum payable may be expressed in words or figures, or both, and where there is a discrepancy the sum denoted by the words is the amount payable, though the figures may be looked at to explain an ambiguity in the words. In any event, even in the absence of any stipulation, interest runs from the due date of the bill, and in an undated bill from the date of issue.

TIME OF PAYMENT AND DAYS OF GRACE.—Bills are payable either on demand or at a determinable future time. They are payable on demand if expressed to be payable on demand, at sight, on presentation, or if no term of payment be expressed, and they be demanded, on a business day. There are no days of grace on such bills. A bill is payable at a determinable future time if expressed to be payable at a fixed period after date, or sight, or the occurrence of a specified event which is certain to happen, though the exact time of happening cannot be foretold, as "one month after my death." An instrument expressed to be payable on a contingency, as "when I marry," is not a bill, even though the contingency occur, though it is not necessarily invalid as an obligation. Where the bill or its acceptance is undated, any holder may insert the true date of issue or acceptance, and the bill becomes payable accordingly. The insertion of a wrong date by the holder, in good faith and by mistake, renders the bill payable on that date. The date of the bill, its acceptance or indorsement, are deemed to be the true dates, unless the contrary be proved, and a bill may validly be ante- or post-dated or dated on a Sunday. For bills not payable on demand, and where the bill does not otherwise provide, three days of grace are allowed, and the bill becomes due and payable on the last day of grace. The acceptor has the whole of the last day of grace in which to make payment (Kennedy, 1894, 2 Q.B. 759); but the holder is entitled at any time on that day to give notice of dishonour to the drawer and indorsers. If the last day of grace falls on a Sunday, Christmas Day, Good Friday, or day appointed by Royal Proclamation as a public fast or thanksgiving day, the bill is, except in the case after mentioned, due and payable on the *preceding* business day; if on a bank holiday (other than Christmas Day or Good Friday), or on a Sunday succeeding a bank holiday, the bill is payable on the *succeeding* business day. When the last day of grace falls on Christmas Day, and that day is a Sunday, bills are due and payable on the previous Saturday; if Christmas Day be a Saturday, bills are due on the preceding business day. But if the last day of grace be a Sunday and the preceding day is Christmas Day, bills are payable on the Monday following. Bank holidays differ in England and Scotland, and the due date of a bill is determined according to the place where it is payable (sec. 72 (5)). Foreign bills are occasionally drawn payable at one or more "usances," or at double, treble, or half "usance." By usance is meant the customary time at which bills are made payable in a particular country—in France thirty days, Hamburg one calendar month, and Leghorn three calendar months. In computing the date on which bills not payable on demand or at sight become due, the day from which the time begins to run is excluded and the date of payment is included. In bills payable after sight, the time begins to run from the date of acceptance if the bill be accepted, or the date of noting or protest if the bill be noted or protested for non-acceptance, or from the date of non-delivery if the acceptor after the lapse of the customary period for refusal or acceptance refuses delivery. The term month means calendar month, and a bill drawn payable one month after the

28th, 29th, 30th, or 31st January is due on 3rd March, except in leap years, when a bill dated 28th January and drawn payable one month after date is due on the 2nd of March.

REFEREE IN CASE OF NEED, AND LIMITATION OF LIABILITY.—The drawer or any indorser of a bill may (see sec. 15) insert the name of a person to whom the holder may resort in case the bill be dishonoured by non-acceptance or non-payment. Such a person is called the referee in case of need, and the holder may resort to him or not as he thinks fit. No special form of words is necessary, provided it is clear that the person named is only a referee and not a party to the bill, and it must be clear, either by actual statement as "in case of need, apply to A. B. for C. D.," or by implication, as where the reference occurs below the signature of the drawer or an indorser respectively, for whose honour it is intended. The drawer or any indorser may also limit or altogether negative his liability to the holder, or waive some or all of the holder's duties to him, such as presenting for payment or giving notice of dishonour, by the addition of such words as "pay D. without recourse," or "without recourse to me." Such an addition leaves the holder free as regards any other party whose liability is not so limited, and a waiver of the holder's duties to any one party still leaves the performance of that duty necessary to all the other parties to the bill.

ACCEPTANCE. — The acceptance of the bill is the drawee's assent to the order of the drawer. No one can become the acceptor who is not a proper drawee, or in other words, an addressee. Thus where a bill is addressed to B. and C. accepts it, C. is not liable as an acceptor. Where a bill is addressed to a firm and accepted for the firm by one of the partners, who adds his own name, the acceptance is that of the firm and not of the partner (*re* Barnard, 1886, L.R. 32 Ch. D. 447 C.A.). The acceptance is completed by the acceptor's signature, generally, though not necessarily, written across the bill, with or without such words as "accepts" or "accepted." The acceptance must be *written*, must contain the acceptor's *signature*, and must be on *some part* of the bill itself, and must not express acceptance for anything but a payment of money, as "payable in goods" or "in bills." Where the bill is payable at sight the date of acceptance should be added, though as the holder may fill it in, it is not necessary. The bill may be accepted before it is signed by the drawer or while it is otherwise incomplete, and the drawer's name may even be added after the acceptor's death. It may also be accepted when overdue or after dishonour by a previous refusal to accept or non-payment. The holder of a bill dishonoured by non-acceptance is entitled to have any subsequent acceptance dated as of the first presentment, and he may so fill it up if the acceptor refuses or neglects to do so. If the bill be accepted as of the date of its second presentment, without the consent of the drawer and indorsers, they will be discharged. An acceptance may, however, be qualified, provided it does not accept for anything but a payment of money or for a sum larger than that named, and the qualification to make it valid must be on the bill itself, be a true qualification, and not a memorandum or addition, and be couched in clear and unambiguous terms. The holder of the bill is of course not bound to take a qualified acceptance, and he may, if he pleases, treat the bill so accepted as dishonoured, and he must, if he takes it, notify the drawer and indorsers of the fact, who will be deemed to assent if they do not, within a reasonable time, express their dissent. The qualified acceptance may make payment dependent on the fulfilment of a condition; be for part only of the sum for which the bill is drawn; or for payment only at a specified place; as to time, as where a bill drawn payable one

month after date is accepted payable six months after date; or by some of the drawees, but not all. The acceptance of one drawee for himself and the others will bind the others if he have their authority, express or implied, to do so (see also "Acceptance for Honour," *infra*).

Filling up Incomplete Bills.—When a simple signature on properly stamped paper is delivered by the signer in order that it may be converted into a bill, it is *prima facie* authority to fill it up for any amount the stamp will cover, using the signature as that of the drawer, acceptor, or indorser. But the signer may prove subsequently that the bill has not been filled up in accordance with his instructions, and thereby escape liability except to a holder in due course to whom it has been negotiated (Herdman, 1902, 1 K. B. 361). If, after completion, such a bill is negotiated to a holder in due course, it is immaterial, so far as he is concerned, that it has not been filled up within a reasonable time and in accordance with the authority given, provided he was not aware of these facts. And so a holder who himself knows that the bill is tainted may transfer it to an innocent person so as to invest him with the rights of a holder in due course (see Garrard, 1882, 10 Q.B.D. 30).

Delivery.—Every contract on a bill, whether the drawer's, acceptor's, or an indorser's, is incomplete and revocable until actual delivery or transfer of possession, actual or constructive, has taken place, with the intention to complete a new contract between the prior parties to it and the holder. So until actual delivery takes place, the drawee may return the bill unaccepted, though he may be liable in damages for his refusal to accept; but if he has actually written his acceptance and intimated the fact to the drawer, his acceptance will be complete and irrevocable. It is an apparent exception to this rule that (in Scotland) if the drawee have funds of the drawer in his hands (as in the case of a cheque drawn on a banker), presentation of the bill to him operates as an intimated assignation, but it is explicable on the ground that the drawee's liability is founded not upon the bill, but on the fact of his indebtedness to the drawer, and that the bill is an assignation of the drawer's right to payment. But the delivery may be proved to be conditional or for a special purpose only. Thus a bill with an unqualified written indorsement may be delivered and received for the purpose of enabling the indorser to raise money for his own use, on the credit of the signature of the indorser, or with an express stipulation that the indorsee, though for value, is to claim against the drawer and acceptor only, and not against the indorser, who agrees to sell his claim against the prior parties, but stipulates not to warrant their solvency. In all these cases the indorser is not liable to the indorsee. But if the bill be in the hands of a holder in due course, a valid delivery of the bill by all parties prior to him, so as to make them liable to him, is conclusively presumed.

Capacity and Authority of Parties.—This is coextensive with capacity to contract. A corporation cannot make itself liable as drawer, acceptor, or indorser of a bill unless it be authorised to do so by its constitution, or it is an essential part of its business. In England, an infant cannot bind himself by the acceptance of a bill of exchange, even though it be accepted for the price of necessaries supplied to him during infancy (*in re* Soltykoff, 1891, L.R. 1 Q.B. 413). But the drawing or indorsing of a bill by one having no capacity to incur liability entitles the holder to receive payment and to enforce it against any other party, though if dishonoured the holder has no recourse against the drawer, and is therefore not bound to give notice of dishonour or to protest it. Presentation

of such a bill will not operate as an intimated assignation of the drawer's assets in the drawee's hands. No person or body of persons, incorporated or not, is liable as drawer, indorser, or acceptor, who has not signed the bill as such, and no person can be liable on a bill except in one of these three capacities. A person signing a bill in a trade or assumed name is liable as if he had signed his own name. Signature of a firm's name is equivalent to the signature of all the partners.

FORGED AND PROCURATION SIGNATURES.—*Forged Signatures.*—A forged or unauthorised signature is wholly inoperative, and no right to retain the bill, to discharge it, or to enforce payment of it can be acquired through that signature unless the party against whom it is sought to retain or enforce payment is precluded from setting up the forgery or want of authority. It does not matter that the holder had no notice of the forgery or want of authority, and no one can be a holder in due course who derives his title through a forged or unauthorised signature. A payment made in due course, that is, at or after the maturity of the bill to the holder, in good faith and without notice that his title to the bill is defective, discharges the liability of the drawee (see *B. of E.* v. *Vagliano*, 1891, L.R. A.C. 107). But a payment on the forged signature of the drawer is not a payment in due course, and does not therefore discharge the drawee, who must deliver the bill to its true owner and pay it when it falls due. A merely unauthorised signature may be subsequently ratified so as to preclude the person so ratifying it from pleading the want of authority. But mere silence does not amount to ratification or adoption (M'Kenzie, 6 A.C. 82).

Procuration Signatures, and Signatures as Agent or Representative.—A signature by procuration operates as a notice that the agent has but limited authority to sign, and the principal is only bound by such signature, if the agent in so signing was acting within the actual limits of his authority (Reid, 1894, L.R. 2 Q.B. 40; and *vide* "CHEQUES"), and the taker of a bill so accepted or indorsed is bound to inquire as to the extent of the agent's authority. Where the agent has such authority his abuse of it does not affect a *bona fide* holder for value (Bryant, 1893, L.R. Ap. Ca. 170). Procuration may be conferred by verbal or written authority or by facts and circumstances inferring implied authority. A person signing by procuration must sign *per pro*, or otherwise show that he is merely an agent, or he will not bind his principal, though he may, if he actually has no authority, bind himself, and if he adds words to his signature showing that he signs for and on behalf of a principal, he will free himself from liability even though his principal repudiate the obligation. But the mere addition of words showing he acts in a representative capacity, as "director," "trustee," or "executor," does not exempt him from personal liability (see W. Lon. Com. Bank, 1884, 13 Q.B.D. 360; M'Meekin, 1889, 16 R. 363). In case of doubt whether a signature be that of a principal or that of the agent by whose hand it is written, the construction most favourable to the validity of the bill is adopted. As to the authority of an agent to accept bills, see Odell, 1887, 19 Q.B.D. 223.

CONSIDERATION AND HOLDER FOR VALUE.—Bills and notes are an exception to the rule of English law that to support a simple contract there must be proof of some valuable consideration. Every party whose signature appears in a bill is, according to the Act (sec. 30), *prima facie* deemed to have become a party thereto for value. In other words, while in other simple contracts the law, in the absence of proof, presumes that there was no consideration, in the case of bills consideration is presumed until the

contrary is proved, or at least appears probable. To this rule there are certain exceptions. These are (sec. 30 (2)), where it is admitted or proved that the acceptance or making, issue or subsequent negotiation is affected with fraud, duress, or illegality. In such cases the presumption and burden of proof will be shifted unless the holder proves that subsequent to the alleged fraud, etc., he, or some one through whom he has derived his title to the bill, gave value therefor in good faith. The proof of the bill being an accommodation bill is not evidence of want of consideration in a question with a holder for value, even although the latter has taken the bill after it is due. Besides actual cash payment, valuable consideration for a bill may be a pre-existing debt, a fluctuating balance (*e.g.* with a banker), a judgment debt, or the compromise of a claim (even though the claim be unfounded). But as a rule a mere moral obligation is not sufficient consideration. In Scotland there is no rule of law requiring consideration for a contract, so that the obligation in a bill is absolute even although no consideration was given unless in the cases figured in sec. 30 (2). In England the entire failure of the consideration for a bill has the same effect as if there had never originally been any consideration.

A "holder for value," as distinguished from a "holder in due course," is one who has given value for it or holds it under a lien, or the holder of a bill for which value has at any time been given (but in that case only as against parties to the bill prior to such time).

HOLDER IN DUE COURSE is a holder who has taken the bill, complete and regular on the face of it (that is not wanting, or bearing signs of alteration in any material particular), before it was overdue, and without notice that it had been previously dishonoured, if that were the fact, in good faith and for value and without notice or knowledge of *any* defect in the title of the person from whom he took it (see Jones, L.R. 2 Ap. Ca. 632; Hitchcock, 1889, 60 L.T. 636; Royal Bank of Scotland, 1894, 2 Q.B. 715; Semple, 1902, 4 F. 421). No one can be a holder in due course of a bill the signature to which has been forged or adhibited without authority. The title of a person who negotiates a bill is defective if he have obtained the bill or its acceptance by fraud, duress, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith or under such circumstances as amount to a fraud. A person with a defective title must be distinguished from one who has no title at all (see "Forged Signatures"). A holder, that is the payee or indorsee in possession, or bearer, who derives his title through a holder in due course and is not himself a party to any fraud or illegality affecting it, is himself in the position of a holder in due course as regards the acceptor and all parties prior to that holder. Every holder is *prima facie* deemed to be a holder in due course, but this presumption may be overcome by parol evidence. If in an action on a bill it is admitted or proved that its acceptance, issue, or negotiation is affected with fraud or illegality, the presumption that the holder is in due course is overcome, and he must then prove that subsequent to the fraud or illegality value has in good faith been given for it and without knowledge of the fraud or illegality (see Tatam, 1889, 23 Q.B.D. 345, and "Rights and Duties of Holder," *infra*).

NEGOTIATION.—The negotiation of a bill is its transfer from one person to another so as to constitute the transferee holder. Thus the mere transfer without indorsement of a bill to order to a person is not a negotiation of it, though a simple transfer may be converted into a negotiation so as to make the transferee a holder (see Day, 1893, *Weekly Notes*, 3 (*per* Stirling, J.)). A bill payable to bearer is negotiated by mere delivery, while a bill payable

to order requires for its negotiation the indorsation of the holder completed by delivery. A mere transfer by the holder of a bill payable to order without indorsation gives the transferee such title as the transferor had, and also the right to have the indorsement of the transferor, in which case the transfer takes effect from the time when the indorsement is given (see *infra*). The title given by a mere transference differs thus from one given by indorsation, in that while an indorser may confer on his indorsee a better title than he himself possessed, a transferee acquires the bill subject to any exceptions and objections competent against his transferor's title. A person who is under obligation to indorse a bill in a representative capacity may do so in such a way as to negative his personal liability.

Negotiation of Overdue and Dishonoured Bills.—A bill which is originally negotiable continues to be so until it has been restrictively indorsed (*infra*), or discharged by payment or otherwise. An overdue bill (see "Time of Payment") can only be negotiated subject to any defect of title affecting it at its maturity or due date, and thenceforward no person who takes it can acquire or give a better title than that of the person from whom he took it. A bill payable on demand becomes overdue when it appears on the face of it to have been in circulation for an unreasonable time, which is a question of fact (see Rothschild, 9 B. & C. 388; and "CHEQUES"). But except where an indorsement bears a date after the maturity of the bill, every negotiation is *prima facie* deemed to have been effected before the bill became overdue (see Parkin, 7 Car. & P. 408). The date of an indorsement is presumed to be its true date, unless the contrary is proved. Any one taking a bill dishonoured before maturity (*e.g.* by non-acceptance), with notice of the dishonour, takes it subject to any defect of title attaching to it at the time of dishonour, and a bill known to be dishonoured is thus on the same footing as one overdue. But this provision does not affect the rights of a holder in due course (*q.v.*).

Negotiation to a Party already liable.—A bill negotiated back to the drawer, a prior indorser, or the acceptor, may be reissued and negotiated by such party, but he is not entitled to enforce payment against any intervening party to whom he was previously liable. Thus a firm as indorsees of a bill cannot sue their indorsers if one of the partners has been one of the indorsers. A bill is discharged if the acceptor becomes the holder of it at or after maturity, and he cannot reissue it.

Re-Negotiation of Bill paid by Drawer or Indorser (see "Discharge of Bill," and "Accommodation Bill," *infra*).

INDORSATION. — An indorsement to be effectual must comply with certain conditions. (First) It must be written on the bill itself and be signed by the indorser, but simple signature, even on the face of the bill, without additional words, is sufficient. But the mere fact that a person writes his name on the back of the bill and hands it to another does not necessarily constitute him an indorser, though it may render him liable as a guarantor (see Stagg, 1895, 12 T.L.R. 12). An indorsement on an *allonge*, or slip of paper attached to a bill, or on a "copy" of a bill issued or negotiated in a country where "copies" are recognised, is deemed to be written on the bill itself. (Second) The indorsement must be an indorsement of the entire bill. A partial indorsement, transferring to the indorsee only a part of the amount payable or transferring the bill to two or more indorsees severally, is not a negotiation of the bill. There seems to be nothing, however, to prevent a holder after securing a payment to account, negotiating the bill *quoad* the balance, since that is then the sum payable. (Third) A bill payable to the order of two or more payees or indorsees who

are not partners must be indorsed by all, unless the one indorsing has authority to indorse for all. (Fourth) If the payee or indorsee is wrongly described or his name misspelt, he may indorse the bill as he is described, adding, if he think fit, his proper signature. In Scotland, if the proper signature be not added, summary diligence is incompetent, and the importance of seeing that the payee and indorsee are properly described and named is therefore apparent. Indorsements on a bill are deemed to have been made in the order in which they appear on the bill, until the contrary is proved (Macdonald, 1883, 8 Ap. Ca. 733).

Kinds of Indorsement.—An indorsement may be in blank or special, or contain terms making it restrictive or conditional, though a conditional indorsation may be disregarded by the payer, and payment to the indorsee is valid whether the condition has been fulfilled or not. An indorsement in blank is one specifying no payee, and a bill so indorsed is payable to bearer. A blank indorsement followed by a special indorsement remains payable to bearer, but the holder must cancel the special indorsement. A special indorsement, as "Pay to A. B.," "Pay to A. B. or order," or "Pay to A. B.'s order," specifies the person to whom the bill is payable, to whom the provisions applicable to a payee apply, with the necessary modifications. A bill payable "to.....order," the blank never having been filled in, is payable to the order of the drawer, and is when indorsed by him a valid bill (Chamberlain, 1893, 2 Q.B. (C.A.) 206). Any holder may convert a blank into a special indorsement by writing above the indorser's signature a direction to pay the bill to, or to the order of, himself or some other person. A restrictive indorsement is one which prohibits the further negotiation of the bill or shows that it is merely an authority to deal with the bill in a particular way, and not a transfer of the ownership of the bill, as "Pay D. only," or "Pay D. for the account of X.," or "Pay D. or order for collection." Such an indorsement gives the indorsee the right to receive payment of the bill, and to sue any party to it as his indorser could have done, but, unless it expressly authorises him to do so, gives him no power to transfer his rights to any indorsee.

Rights, Powers, and Duties of Holder.—*Rights and Powers of Holder.*—The holder (*i.e.* the payee or indorsee in possession of a bill to order or the possessor of a bill to bearer) may sue in his own name, and is entitled to maintain an action on the bill in his own name against any or all of the parties liable on it, unless it can be shown that he holds the bill adversely to the interests of the true owner. If, however, the bill be payable to a specified person or persons, any action on it must be raised in the name of such person or persons. A holder in due course may enforce payment against all parties liable on the bill. Thus a holder whose title is defective, as, for example, if he have stolen or found the bill or obtained it through fraud, cannot give a valid discharge for the bill, and if he obtain payment must deliver the amount to the true owner for whom he is deemed to have received it. But if he have negotiated it to a holder in due course, the latter acquires a good and complete title to it, and may enforce payment against all parties liable on it to the exclusion of the rights even of the true owner. The holder whose title is defective has the *power*, which is an incident of apparent ownership, to negotiate the bill, while a holder in due course has the *right*, which is an incident of actual ownership, to do so.

General Duties of Holder.—There are certain duties which it is incumbent on the holder to perform, and his omission to perform any one of them has effect of freeing all parties liable on the bill, except the acceptor,

not only from the bill itself, but from the debt or consideration for which it was granted. He must, if necessary, present the bill for acceptance; he must present it for payment; and he must give notice of dishonour by non-acceptance and non-payment if the bill be dishonoured in either respect; and he must in certain cases, and may always, if he think fit, note and protest the bill for such dishonour.

PRESENTMENT FOR ACCEPTANCE is necessary in only three cases to render the parties to the bill, other than the acceptor, liable, and a bill expressed "pay without acceptance" is perfectly valid. It is necessary in bills payable after sight, in order to fix the maturity of the bill; where the bill itself expressly stipulates that it shall be presented for acceptance; or where it is drawn payable elsewhere than at the residence or place of business of the payee. In this last case if the holder has not time, with the exercise of reasonable diligence, which varies according to circumstances, to present the bill for acceptance before presenting it for payment on the day it falls due, the delay caused by presenting it for acceptance before presenting it for payment will be excused and will not, as in the ordinary case, discharge the drawer and indorsers. The holder of a bill payable after sight must either present it for acceptance or negotiate it within a reasonable time, or the drawer and all prior indorsers will be discharged. What is a reasonable time will depend upon the nature of the bill, the usage of trade with respect to similar bills, the facts of the particular case, and the interests of the holder and of the drawer and indorsers, and will be reckoned from the date when the holder receives it and with reference to the time each successive holder keeps it.

Rules for Presentment for Acceptance.—Presentment for acceptance differs from presentment for payment in this material distinction, that it should be *personal*, and it is immaterial where it is made so long as it is made to the drawee personally, whereas presentment for payment should be *local* and where the money is, whether the drawee happen to be there or not. The presentment must be made by or on behalf of the holder, to the drawee himself personally, or to some person authorised to accept or refuse acceptance on his behalf, at a reasonable hour (that is, during business or bank hours) on a business day, and before the bill is overdue. If the drawee is not in business, it is a jury question whether the presentation has taken place during reasonable hours. Where a bill is drawn on a firm whose business entitles a partner to accept bills, presentment to one of the partners is sufficient, and one drawn on a company incorporated under the Company Acts must be presented to a person who has the company's authority to accept bills (Companies Act 1862, sec. 47). A bill addressed to two or more drawees who are not partners must be presented to them all, unless one has authority to accept for all; but if acceptance be refused by one, it need not be presented to the others, since an acceptance by them would be a qualified acceptance, and could not be taken without the assent, express or implied, of the other parties liable on the bill (see *infra*). If the drawee is dead or bankrupt, presentment may, but need not necessarily, be made to his representatives or trustee respectively. Where sanctioned by agreement or usage presentment may be made by post. But presentment is excused, and the bill may be treated as dishonoured by non-acceptance, if the drawee is dead or bankrupt, or is a fictitious person, or one who has not capacity to contract by bill; or where, by reasonable diligence, the presentment cannot be effected; or where, though the presentment has been irregular, acceptance has been refused on some other ground, as, for example, where the bill has been presented on a non-business day or

after hours, and refused on the ground of the want of funds. But the mere fact that the holder had reason to believe that acceptance would be refused on presentment will not excuse him from making presentment notwithstanding.

Dishonour by Non-Acceptance.—A bill is dishonoured by non-acceptance when it is duly presented for acceptance, and proper acceptance is refused or cannot be obtained; or when presentment is excused, and the bill is not accepted. When a bill is dishonoured by non-acceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder, and no presentment for payment is necessary. Notice of dishonour must, however, be given, and the bill protested where necessary. If the bill is duly presented for acceptance and is not accepted within the customary time, the holder must treat it as being dishonoured by non-acceptance, or he will lose his right of recourse against the drawer and indorsers. The drawee is entitled to have the bill left with him for acceptance, and to retain it for that purpose for twenty-four hours, but on the lapse of that time he must deliver it, accepted or not. The holder is not bound to take a qualified acceptance, and if he do not obtain an unqualified acceptance he may treat the bill as dishonoured. If he take a qualified acceptance without the assent of the drawer and indorsers, these are discharged of their liability. But this provision does not apply to a partial acceptance, provided due notice is given to the drawer and indorsers, and if the bill be a foreign bill it is protested for the balance. The drawer or indorsers, in any case, on receiving notice of a qualified acceptance, must express their dissent to the holder within a reasonable time, which is dependent on the circumstances of each particular case, otherwise they will be deemed to have assented to it.

PRESENTMENT FOR PAYMENT.—When a bill is accepted generally, presentment for payment is not necessary to render the *acceptor* liable, since he is at common law bound to find out his creditor and pay him. And even, where the terms of a qualified acceptance requires that presentment for payment shall be made as a condition precedent to the acceptor's liability, the omission to present the bill on the day that it matures will not discharge the acceptor, in the absence of express stipulation to that effect. Nor, to render the *acceptor* liable, is it necessary to protest the bill or to give him notice of dishonour. It is a very well established and very convenient rule of law that the acceptor of a bill is liable in terms of his obligation without the necessity of charging him by presentment. What are called the requisites of negotiation—presentment, protest, and notice of dishonour—are only necessary to preserve the holder's recourse *against the drawer and indorsers*, in order that each of them may be in a position without delay to enforce his recourse against those who are liable to him. But the acceptor of a bill or the maker of a note is always liable, in terms of his obligation, for his signature without notice. If there be a condition that the bill is payable at a particular place, then, following a distinction that had already been established by decision, the Act made that condition as to place of payment applicable to the acceptor, because that is a condition of the contract. When the holder presents the bill for payment, he must exhibit it to the person from whom he demands payment, and if the bill be paid he must deliver it up. A partial payment should be marked on the bill itself, but of course the holder is not bound to deliver up the bill except for payment in full. A payment to account of the value of £2 or upwards marked on a bill requires a penny stamp (Finance Act 1895).

Requisites for Proper Presentment.—When the bill is not payable on

demand, presentment must be made on the day it falls due, that is, the last day of grace. When payable on demand, to render the *drawer* liable, it must be presented within a reasonable time after issue, and to render the *indorser* liable, within a reasonable time after indorsation. The reasonableness of the time depends on the usage of trade, the nature of the bill, and the facts of the particular case. The presentment must be made by the holder personally or by some one authorised by him to receive payment, at a reasonable hour on a business day, at the proper place (see *infra*), to the person named as payer, or to some one authorised by him to make payment, if such a person can, with the exercise of reasonable diligence, be found there. Reasonable hours are bank or business hours, or in the case of a dwelling-house any time before bed-time. Presentment must be made to the acceptor or drawee, even if he be bankrupt, and not to his trustee. Presentment to a company in liquidation is, however, made to the liquidator.

The Proper Place.—If a place of payment is specified, presentment must be made there, whether the acceptor has left the place or not, and presentment to the acceptor at another place is not sufficient. So, if the acceptor die before the bill matures, presentment at the place specified is sufficient. If the bill be presented at the proper place, and no person can be found there to pay or refuse payment, then no further presentment to the acceptor is necessary. If the bill be domiciled at a bank in a town where there is a clearing-house, presentment through the clearing-house is sufficient, and where there are alternative places of presentment, presentment at one is sufficient. Where no place of payment is specified, but the address of the drawee or acceptor is given, the bill must be presented there; and if neither is given, then at the acceptor's place of business, if known, or at his residence, if known. In any other case it must be made to the acceptor wherever he can be found, or if he cannot be found, then at his last known business or house address; and if he be dead, then to a personal representative, if one can be found. If there be two or more drawees or acceptors, who are not partners, presentment must be made to all of them, and the refusal of one to pay does not, as in presentment for acceptance, dispense with presentment to the others. If authorised by agreement or usage, presentment may be made by post. Such usage exists in England.

Excusable Non-Presentment and Delay in Presenting.—Delay in presenting is excused when caused by circumstances beyond the holder's control, and not imputable to his fault, misconduct, or negligence, as, for example, his sudden illness or death, or his distance from a post-office, or in consequence of unavoidable business. But if the cause of delay ceases to operate, presentment must then be made with reasonable diligence. Presentment is altogether dispensed with when, after the exercise of reasonable diligence, it cannot be effected. That is to say, the holder is not bound to make superhuman efforts to effect presentment, but only such as are reasonable in the circumstances; but the fact that he believes the bill will be dishonoured on presentment does not excuse him making a reasonable effort to present it; nor even the fact that the drawer, in ignorance of the fact that no actual presentment has been made, writes accepting notice of non-payment and admitting liability. Presentment is also dispensed with, necessarily, where the drawee is a fictitious or non-existing person. As regards the *drawer's* liability, presentment need not be effected where, as between him and the drawee, there is no relation of debtor and creditor, and the latter is not bound to pay or accept the bill, and where therefore the drawer has no reason to believe that the bill will be paid by the drawee if presented—as,

for example, where the acceptor is a mere accommodating party and the drawer is bound to put him in funds to pay the bill. And so as regards an *indorser*, presentment is dispensed with if the bill was accepted for his accommodation, and he has therefore no reason to believe that it will be paid by the acceptor on presentment. Presentment is also dispensed with as regards any of the parties by waiver, either express or implied, as where the drawer induces the holder to delay presentation or waives his right to plead non-presentation subsequent to the maturity of the bill.

DISHONOUR BY NON-PAYMENT. — A bill is dishonoured when it is duly presented and payment is refused or cannot be obtained, or when presentment being excused the bill is overdue and unpaid. On dishonour an immediate right of recourse against drawer and indorsers accrues to the holder. The acceptor has the whole of the last day of grace in which to make payment, and the holder has therefore no right of action against him until the expiry of that day, though he is entitled, at any time on the last day of grace, to give notice of dishonour to the drawer and indorsers (Kennedy, 1894, L.R. 2 Q.B. 759). Whenever dishonour takes place notice of the fact must at once be given to the drawer and each indorser, or the liability of any one to whom notice is not sent will be discharged. If the bill is dishonoured by non-acceptance and due notice of the fact be given, it is not necessary to give notice of subsequent dishonour by non-payment, unless the bill has, in the meantime, been accepted.

Requisites and Effect of Notice of Dishonour.—The notice must be given by or on behalf of the holder, or by or on behalf of an indorser who is himself liable at the time. An agent may give notice in his own name or that of any one entitled to give notice, whether his principal or not. Notice given by the holder enures for the benefit of all subsequent holders and all prior indorsers who have a right of recourse against the party to whom it is given; and notice by an indorser enures for the benefit of the holder and all indorsers subsequent to the party to whom it is given.

How Notice may be given.—It may be given in writing, in which case it need not be signed, or by personal communication, and in any terms which will sufficiently enable the party to identify the bill and intimate the nature of the dishonour. An insufficient written notice may be supplemented and validated by a personal communication. A mere mis-description will not vitiate the notice unless the party to whom it was given was in fact actually misled by it. The *onus* of proving notice is on the holder. If the bill has been noted and protested, that fact, and that recourse is claimed against the party to whom notice is given, should be stated. Before the Act notice was essential, but now, under the provisions of the Act, the mere return of a dishonoured bill to the drawer or an indorser is all that is necessary, in point of form, to effect sufficient notice of dishonour.

To Whom and When Notice must be given.—The notice may be given to the person himself or his duly authorised agent. Notice to a party's solicitor or to a referee in case of need is not sufficient, but notice to a merchant's clerk given at his counting-house is. If the party be, to the holder's knowledge, dead, then notice must be given to his personal representative, if he have one and he can be found by reasonable diligence; and if he be bankrupt, then notice may be given either to himself or his trustee. Notice must be given to each of two or more drawers or indorsers, unless they are partners or one have the authority of the rest to accept notice for them.

Time for giving Notice.—Notice may be given as soon as the bill is dishonoured, and *must* be given within a reasonable time thereafter. In order

to be given in reasonable time, where the party giving and the party receiving reside in the same place, it must be so given as to reach the latter the day after dishonour, not counting non-business days; and where they reside in different places, the notice must be sent off on the day after dishonour, if there be a post at a convenient hour on that day, or if not, by the next post thereafter, non-business days being excluded (see Fielding, 1897, L.R. 1 Q.B. 268). The holder is entitled, if he do not know the indorser's address, to time to make inquiries; and delay in giving notice is excused when caused by circumstances beyond the control of the party giving notice, and not imputable to his fault, misconduct, or misfortune. Notice must, however, be given with reasonable diligence, if the cause of delay ceases to operate. If the notice be duly addressed and posted, due notice is deemed to have been sent, notwithstanding miscarriage by the post-office; but if the notice be not properly addressed, then the sender must prove that it actually was delivered. If the bill, when dishonoured, is in an agent's hands, he may either himself give notice to the parties liable, or to his principal. In the latter case he must do so within the same time as if he were the holder, and his principal has then the same time for giving notice as if the agent had been an independent holder. So when a party receives notice he has, after the receipt of it, the same time for giving notice to antecedent parties as the holder has after dishonour.

Notice of dishonour is dispensed with when, with the exercise of reasonable diligence, it cannot be properly given to, or does not reach, the party sought to be charged; but failure of the holder, at the time of dishonour, to find the drawer at the address he has given, does not dispense with notice to him if his address is found before action is brought (Studdy, 60, Law Times (N.S.), 647). It is also dispensed with by waiver, express or implied (see *ante*, "Presentment for Acceptance"). As regards the *drawer*, it is dispensed with where he and the drawee are the same person; where the drawee is fictitious or without capacity to contract; where the drawer is the person to whom it is presented for payment or where the bill is payable at his house; where the drawee or acceptor is not in the position of debtor to the drawer, and is therefore under no obligation to accept or pay the bill, as in an accommodation bill (*q.v.*); or where the drawer has countermanded payment (see "CHEQUES"). As regards an *indorser*, notice is dispensed with where the drawee is fictitious or a person without capacity to contract, and the indorser was aware of the fact when he indorsed the bill; where the indorser is the person to whom the bill is presented for payment, as where he becomes the executor of the acceptor; or where the bill was accepted or made for his accommodation.

NOTING AND PROTEST.—*Noting.*—If the drawee of a bill refuses to accept it when presented for that purpose, it may be noted and protested for non-acceptance. If after acceptance he fails to meet it at maturity, it may be noted and protested for non-payment. The noting is effected by the notary marking on the bill his initials, the date, noting charges, and a reference to the book in which the notary enters up a record of the matter. It is in effect a mere memorandum by the notary to assist him in writing out the formal protest should that be required. It is not necessary that the notary should himself have presented the bill in order to note and protest it. To be effective the noting should be on the day of the dishonour of the bill, unless delay is caused by circumstances beyond the control of the holder, and not imputable to his fault or negligence. When the bill has been presented and returned through the post, and received after business hours, it may be noted next day. A foreign bill, appearing on the

face of it to be such, *must* be noted and protested for dishonour by non-acceptance, and for dishonour by non-payment (unless previously dishonoured by non-acceptance). If not so protested, the drawer and indorsers will be discharged. But a foreign bill payable on demand need not be protested to preserve the right of a holder in due cause, provided it has not been in circulation for an unreasonable length of time before presentment for payment. An inland bill may be, and frequently is, noted for dishonour by non-acceptance or non-payment as evidence of due presentment, or where the bill is drawn after sight in order to fix the date of maturity, but noting or protest is not necessary in order to preserve recourse by a holder in due course against the drawer or indorsers. An inland bill is also protested for non-acceptance, for better security (see *infra*), or for non-payment, as a preliminary to acceptance or payment for honour. The acceptor or payer for honour is only liable if the bill is duly presented to the drawer for payment, and protested for non-payment, and on payment is entitled to the bill and protest. If a bill contains a reference in case of need, it must be protested for non-payment before being presented to the referee. In Scotland bills must be noted and protested in order to enable the holder to avail himself of the very effective means for recovering payment known as summary diligence (see *infra*). The formal protest does not require to be written out on the date of noting, but may be written out or "extended" at any time subsequently, and dated as of the date of the noting.

Protest for better Security.—When the acceptor becomes bankrupt or insolvent or suspends payment before the bill matures, the holder may protest the bill for better security against the drawer and indorsers, though no right of recourse accrues to him till the date of maturity. A bill in such circumstances may be accepted *supra* protest (*infra*).

Place of Protest.—The bill must be protested at the place where it is dishonoured. But if it have been presented by post and returned by post dishonoured, it may be protested at the place to which it is returned, on the day of its return if received during business hours, or if not, on the following day at latest. And if it have been drawn payable at the place of business or residence of some person other than the drawee, it must be protested at that place, and no further presentment to the drawee is necessary.

Requisites of Protest.—The protest must contain a copy of the bill, must be signed by the notary making it, and it must specify the person at whose request it is made, the place and date of protest, the reason for protesting, the demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found. The protest may be issued in duplicate or triplicate, but each copy must be duly stamped. Where the duty on the bill or note does not exceed a shilling, the duty on the protest is the same as on the bill; in all other cases it is one shilling. The notary who protests need not personally present the bill for payment, nor need the witnesses referred to in the protest be present. If the bill be lost or destroyed, or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

Protest is dispensed with in any circumstance which would dispense with notice of dishonour, and delay in noting or protesting is excused when it is caused by circumstances beyond the control of the holder, and not imputable to his fault, misconduct, or negligence. But the want of a notary is no excuse for delay; and when the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Protest without Notary.—If the services of a notary cannot be obtained at the place where the bill is dishonoured (but only at that place), any householder or substantial resident of the place may, in the presence of two witnesses, give a certificate signed by them, attesting the dishonour of the bill, and the certificate is in all respects as good as though it were a formal protest. The Act furnishes in a schedule a form of certificate which may be used.

THE LIABILITY OF THE VARIOUS PARTIES.—*Liability of the Drawee.*—Except in Scotland a bill does not operate as an assignment of funds in the hands of the drawee available for the payment thereof, and the drawee of a bill is in no way liable on the bill till he accepts.

Liability of the Drawee in Scotland.—In Scotland, where the drawee has in his hands funds (not goods) available for the payment of the bill, that is, where he is the drawer's debtor or has funds belonging to the drawer in his possession, the bill operates as an intimated assignment of the sum for which it is drawn, in favour of the holder, from the time when it is presented to the drawee (see sec. 53 (2); Brit. Linen Bank, 1883, 10 R. 923; and 1885, 12 R. 825). Therefore, in an action against the drawee the bill is founded on as an assignment, and not solely as a bill, the holder's right to recover being dependent on the existence of a debt due by the drawee to the drawer, and on the validity of the assignment of that debt to him. If the drawee have funds of drawer in his possession, but insufficient in amount to meet the whole bill, presentation of the bill will, in Scotland, operate as an intimated assignation of the funds up to the amount in the drawee's hands. Thus the presentation of a bill or a cheque (which is a bill payable on demand) drawn upon a banker for say £100, while the customer has only £50 standing to his credit in the banker's books, will operate in Scotland as an assignation of the £50 in the holder's favour. In such a case it is the practice of the Scotch banks to transfer the amount standing at the customer's credit to a special account referable to the bill, note, or cheque, and to retain it until the matter is judicially determined or arranged between the parties. Bills are preferable according to the respective dates of their presentation to the drawee.

Liability of the Acceptor.—The acceptor, by accepting, engages that he will pay the bill according to the tenor of his obligation; and he is precluded from denying to a holder in due course—(*a*) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the bill—that is to say, it is immaterial so far as concerns the acceptor's obligation to pay a holder in due course that the drawer be dead, or have been incapable of contracting an obligation, or that his signature has been forged or adhibited without his authority. (*b*) In the case of a bill payable to the drawer's order, he is precluded from denying to a holder in due course the then capacity of the drawer to indorse, but not the genuineness or validity of his indorsement. (*c*) And in the case of a bill payable to the order of a third person, he is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse, but not the genuineness or validity of his indorsement. He may, therefore, in such a case refuse to pay on the ground that the payee's signature is forged or adhibited without his authority. If a bill has been paid and the money received in good faith, and it is discovered after such a lapse of time that the holder's position may have been altered for the worse, that the indorsements on it are forgeries, the money so paid cannot be recovered from the holder (Lon. and Riv. Plate Bank, 1896, L.R. 1 Q.B.

7, *per* Matthew, J.). (For the liability of the acceptor for honour, see "Acceptance for Honour," *infra*.)

Liability of Drawer.—The drawer by drawing the bill engages that on due presentment it shall be accepted and paid according to its tenor by the acceptor, and that if the acceptor fails to pay it he will compensate the holder or any indorser who is compelled to pay it, provided the requisite proceedings are duly taken. He is precluded from denying to a holder in due course the existence of the payee and his then capacity to indorse the bill.

Liability of Indorser.—The indorser, by indorsing the bill, engages that on due presentment it will be accepted and paid according to its tenor, and, if it be not, that he will compensate the holder or any subsequent indorser who is compelled to pay it, provided the requisite proceedings are duly taken. He is precluded from denying (*a*) to a holder in due course the genuineness and regularity in all respects of the drawer's signature and all previous indorsements—that is, he is liable to the holder in due course whether the signatures of the drawer and any prior indorser be forged or adhibited without authority or not; (*b*) to his immediate or a subsequent indorsee—that is, the person to whom he gives it, or a subsequent holder, that the bill was at the time of his indorsement a valid and subsisting bill, and that he had a good title to it.

Liability of successive Indorsers to each other.—The indorsers are, as regards a holder in due course, liable jointly and severally, but as between each other they are, in the absence of evidence to the contrary, liable according to the ordinary principles of the law merchant, whereby a prior indorser must indemnify a subsequent one. But the whole circumstances attendant upon the making, issue, and transference of a bill or note may be legitimately referred to for the purpose of ascertaining the true relation to each other of the parties who put their signatures upon it either as makers or indorsers; and reasonable inferences derived from these facts and circumstances are admitted to the effect of qualifying, altering, or even inverting the relative liabilities which the law merchant would otherwise assign to them. Thus where the directors of a company mutually agreed with each other to become securities to a bank for debts of a company, and in pursuance of that agreement indorsed a promissory note of the company, it was held that they were entitled and liable to equal contributions *inter se*, and that they were not liable to indemnify each other successively according to the order of their signatures on the note (Macdonald, 1883, L.R. 8 Ap. Ca. 733).

Liability of Stranger signing Bill.—A person who signs a bill, otherwise than as a drawer or acceptor, thereby incurs the liabilities of an indorser to a holder in due course. Such a signature is one known as *per aval*, and by the law merchant is only available to a person who *thereafter* takes the bill. As no one can sign a bill as acceptor except the drawee, a referee in case of need, or an acceptor for honour, a stranger cannot sign as the acceptor of the bill, and if he does so his signature is wholly inoperative. If, however, a stranger subscribe his name in the place properly occupied by the acceptor's signature, his subscription is held to be one *per aval*. One who subscribes a bill *per aval* really occupies the position of a surety, but the addition of that or a similar word, while it may serve to indicate the character in which he subscribes, in no way limits or alters his liability, which is that of an indorser. Thus where a stranger signed an indorsement to the effect that, in case of non-payment by the acceptor, the bill was to be presented to him, it was held that, though he was not liable as an indorser, since the indorsement was not part

of the bill, nor as an acceptor, as he could not sign in that capacity, his obligation was really one of guarantee to the drawer that if the acceptor failed to pay the bill he would do so for him (Stagg, 1895, 12 T.L.R. 12).

Liability of a Transferor by Delivery.—A transferor by delivery is a holder of a bill payable to bearer, or a bill indorsed in blank, who negotiates it by delivery without indorsation. Such a person incurs no liability on the instrument, but if he transfer it for value he warrants to his immediate transferee that the bill is what it purports to be, that is, that the signatures to it are neither forged nor unauthorised, that he has a right to transfer it, or, in other words, that he is neither a thief nor a finder, and that he is not aware of any fact, such as material alteration, which would render the bill valueless. If in any of these considerations his warranty fails, he is liable to the transferee in compensation.

THE SUM FOR WHICH PARTIES ARE LIABLE.—When a bill is dishonoured an immediate right of recourse accrues to the holder, and in certain cases to the drawer and indorser, not only for the amount of the bill but for interest and expenses, as damages which are deemed to be liquidated damages, or damages capable of instant verification. Thus the holder may recover from *any* party liable on the bill, the drawer who has been compelled to pay the bill may recover from the *acceptor*, or an indorser who has been compelled to pay the bill may recover from the *acceptor*, the *drawer*, or any *prior indorser*—(First), the amount of the bill; (Second), interest thereon from the time of presentment for payment, if the bill is payable on demand, or from its maturity in any other case (if the bill be dishonoured by non-acceptance, interest only runs, however, from the date of maturity); but the interest may, if justice require it, be withheld wholly or in part, and where a certain rate is expressed, may not be given at the same rate; (Third), the expenses of noting, or where protest is necessary and the protest has been extended, the expenses of protest, including protest for non-acceptance (but not for better security) and excluding expenses of commission (*In re* Eng. Bank of Riv. Plate, 1893, L.R. 2 Ch. 438). "Bank charges" has been held to be a sufficient description of the expenses of noting, and therefore a liquidated demand within the meaning of the Act (Dando, 1893, L.R. 1 Q.B. 318). In the case of a foreign bill, dishonoured abroad, the parties may, in lieu of the damages mentioned, recover the amount of the re-exchange with interest thereon till the time of payment (see *ex parte* Roberts, 1886, 18 Q.B.D. 286, C.A.).

THE DISCHARGE OF THE BILL.—When a bill is discharged all rights of action upon it are extinguished, and it ceases to be negotiable. A bill is discharged by payment in due course, by which is meant payment made at or after its maturity to the holder or his authorised agent in good faith, and without notice that his title to it is defective, by or on behalf of the drawee or acceptor. It is also discharged by return into the acceptor's hands, by renunciation, cancellation, or material alteration. When a bill is paid by the drawer or the indorser, it is not thereby discharged; but where a bill payable to, or to the order of, a third party is paid by the drawer, he may enforce payment of it against the acceptor, but he may not reissue the bill (except where the bill has been negotiated back to him before maturity). And where a bill is paid by an indorser, or where a bill payable to the drawer's order is paid by the drawer, the indorser and drawer are respectively reinstated in their former rights as regards the acceptor or antecedent parties, and they may, if they think fit, strike out their own and subsequent indorsements, and again negotiate the

bill. The subsequent indorsers are, in such a case, discharged by the payment of the drawer or prior indorsers. Consequently if the bill be negotiated after payment without cancellation of the signatures of the payer and subsequent indorser, their indorsee can have no claim against them, since in such circumstances no holder can be a holder in due course. An accommodation bill (*q.v.*) is discharged by the payment of the person accommodated.

Discharge by Return into the Acceptor's Hands.—When the acceptor of a bill is or becomes the holder of it at or after maturity in his own right —that is, where the debtor and the creditor in the bill are or become the same person, the bill is discharged. This provision does not, of course, apply to an acceptor for honour, who is not the acceptor of the bill in the ordinary sense (see *infra*).

Discharge by Renunciation takes place when the holder, at or after maturity, absolutely and unconditionally by writing (which records the actual renunciation, and is not a mere intention to effect it, see *In re* George, 1890, 44 Ch. D. 627) renounces his rights against the acceptor, and has the effect of releasing both the acceptor and any one liable through him from all liability on the bill. The renunciation may be verbal, if it is accompanied by the delivery of the bill to the acceptor, otherwise it must be in writing, and be a record of an absolute and unconditional renunciation of the holder's rights on the bill or note. A mere memorandum renouncing the holder's rights is not sufficient, though such a writing might be used as evidence that a subsequent handing of the bill to the acceptor was made with the intention of renunciation (see Crawford, 1873, 2 H.L. sec. 458). But a verbal renunciation accompanied by the delivery of a note to a person taking benefit under the will of the maker was held not to operate as a discharge, though it would probably have done so had the delivery been made to an executor or administrator (*Edwards* v. *Walkers*, 1896, 2 Ch. 157). The renunciation may be made conditional, when it will not take effect unless and until the condition is fulfilled, and though the holder will be barred from enforcing the bill while the condition remains suspensive, he is not thereby prevented from negotiating it to a new holder who, if he be a holder in due course, will not be affected by his indorser's disabilities, and may therefore enforce his rights regardless of the condition. The liability of any other party to the bill may similarly be renounced by the holder before or at its maturity. No renunciation will affect the rights of a holder in due course without notice of it (sec. 62).

Discharge by cancellation takes place when the bill is *intentionally* cancelled by the holder or his agent, and the cancellation is apparent on the bill. As with renunciation, the liability of any party to the bill may be discharged by the *intentional* cancellation of his signature by the holder or his agent; and the cancellation of any party's signature has the effect not only of discharging that person's liability but that of any other party who had a right of recourse against him. Thus the intentional cancellation of the acceptor's signature discharges the bill; of the drawer's signature, the indorser's liability; and of an indorser's signature, the liability of all indorsers subsequent to him. An unintentional cancellation or one made under a mistake has no effect, but the burden of proving that it was unintentional or made under mistake, or without authority, lies on the person who alleges it to have been so (see Bank of Scotland, 1891, A.C. 592). As to the authority of a collecting agent to cancel a bill, see Bank of Scotland, *supra*. In Scotland an apparent cancellation of a bill renders summary diligence upon it incompetent.

Discharge by Alterations on the Bill.—1. *Apparent* alteration. A *material* alteration on a bill, made thereon without the assent of all parties liable on it, renders it void as a bill against all parties except the person making or assenting to the alteration, and indorsers subsequent to him. The holder may of course still sue on the original debt, as the alteration only voids the bill as an instrument of debt. A material alteration on a bill after issue renders it a new instrument requiring a fresh stamp (Suffell, 1882, L.R. 9 Q.B.D. 555). A bill may be altered before issue, that is before its delivery complete in form to a person who takes it as a holder for value, but any alteration made before issue but after acceptance, without the consent of the acceptor, will release him from his liability (Engel, 53, J.P., *per* Charles, J.). But it must be remembered that a bill which is merely *wanting* in some material particular may be filled up by the person in possession of it in any way he thinks fit (see "Acceptance: filling up incomplete bills," *supra*). A mere correction is not a material alteration, nor is the addition of words which do not alter the effect of the bill as issued. 2. *Non-apparent* alteration. If the alteration be not apparent, the holder in due course may treat the bill as if it had not been altered, and sue on it according to its original tenor (see Leeds Bank, 1883, L.R. 11 Q.B.D. 84; Scholfield, L.R. 1896, A.C. 514, and cases there cited).

The alterations which are material are any alteration of the date, the sum payable, the time or place of payment, or the consideration, the substitution of one drawer for another, the alteration of an indorser's name, the erasure of the acceptor's name and the substitution of another therefor, and where the acceptance is general the addition of a place of payment without the acceptor's consent. The addition of the word "pay" by the holder in due course in an accepted bill was in a Scotch case held not to be a material alteration (Maclean, 1899, 1 F. 381).

ACCEPTANCE FOR HONOUR.—If a bill be protested for non-acceptance or for better security, and not overdue, any person not already liable on it may, with the holder's consent, intervene and accept it *supra* protest for the honour of any person who is liable on it, or of the person for whose account it is drawn. A bill therefore, it will be seen, cannot be accepted for the honour of the drawee, because until he has accepted it no liability attaches to him; nor for the honour of an indorser who has indorsed restrictively or in a representative capacity, though it may be for the honour of his principal in the latter case; nor for the honour of an indorser who has negotiated the bill back to the holder; nor for any party against whom recourse has been lost by failure to negotiate, or whose obligation has been discharged by renunciation or cancellation, because in none of these cases are such parties still liable on the bill. But before the bill can be accepted for honour it must have been protested for dishonour by non-acceptance, because until that has been done no person but the drawee can accept it (see "Noting and Protest," *supra*). A bill may be accepted for honour for part only of the sum drawn, and, without the drawer's consent, this is the only qualified acceptance that can be taken by the holder.

Requisites of Acceptance for Honour.—It must be written on the bill, be signed by the acceptor for honour, and indicate that it is for honour, though no special form of words is necessary. The form usually adopted is "accepted for the honour of A. B. *supra* protest," or simply "accepted s.p." It need not specify for whose honour the acceptance is made, but if it do not do so the acceptance is deemed to be for the honour of the drawer. In the case of a bill payable after sight and accepted for honour, its maturity is

calculated from the date of its noting for dishonour by non-acceptance, and not from the date of the acceptance for honour.

Liability of the Acceptor for Honour.—The acceptor for honour engages that he will, on due presentment, pay the bill according to the tenor of his acceptance, if it is not paid by the drawee, provided it has been duly presented for payment to the drawee (unless presentment is excused) and protested for non-payment, and that he receives notice of these facts, which need not be in writing, but must be in terms such as to identify the bill. The acceptor for honour is liable to the holder, and all parties *subsequent* to the one for whose honour he has accepted. Any defence which would be competent to an acceptor is also competent to an acceptor for honour.

Presentment for Payment to Acceptor for Honour.—A dishonoured bill accepted for honour *supra* protest, or one containing a reference in case of need, must be protested for non-payment before being presented for payment to the acceptor for honour or referee in case of need. The protest need not be extended, and the noting is sufficient. The bill must be presented not later than the day following its maturity where the acceptor for honour is in the same place where the bill is protested; in any other case, the bill must be forwarded for presentment not later than the day following its maturity, non-business days being in each case excluded. Delay in making presentment or non-presentment are excused in the same circumstances as those which excuse delay in presentment for payment or non-presentment for payment. If the bill be dishonoured by the non-payment of the acceptor for honour, it must be protested for non-payment by him. In that case also noting is sufficient.

Payment for Honour.—If a bill be protested for non-payment, any person may pay it *supra* protest for the honour of any party liable thereon, or for the honour of the person on whose account it is drawn. A person who takes up and pays a bill for the benefit of a particular party succeeds to the title of the person *from* whom, not *for* whom, he receives it, and has all the title to sue upon the bill which such person had, except that he discharges all the parties subsequent to the one for whose honour he pays, and that he cannot himself indorse it to another holder. The consent of the holder is not necessary, but the payment must be made on behalf of a party, including the acceptor, who is at the time liable on the bill. Where two or more persons offer at the same time to pay for the honour of different parties, the person whose payment will discharge most parties to the bill is entitled to the preference, and therefore a payment for the honour of the acceptor is preferable to one for the honour of the drawer, of the drawer to one for an indorser, and of a prior to one for a later indorser.

Notarial Attestment of Payment.—The payment for honour, in order to operate as such and not as a mere voluntary payment, must be attested by a notarial act of honour, which may be appended to the protest or form an extension of it, and which must be founded on a declaration by the payer for honour or his agent, specially authorised for the purpose, of his intention to pay the bill for honour, and for whose honour payment is made.

Effect of Payment.—On payment of the bill all parties subsequent to him for whose honour payment is made are discharged, and the payer is surrogated in and succeeds to both the rights and duties of the holder as regards the party for whose honour he pays and all parties liable to him; and though he takes the bill subject to any exception that might be pleaded against the holder, he must discharge all the duties incumbent on the holder, such as giving notice of dishonour by non-payment to the person for whose honour he pays, and any person liable to him, if they have not

already been discharged. The payer for honour, on payment of the bill and the notarial expenses of its dishonour, is entitled to receive both the bill and the protest.

If the holder refuse payment when offered to him he loses his right of recourse against any party who would have been discharged by that payment.

LOST BILLS AND BILLS IN A SET.—Where a bill has been lost before it is overdue, the person who was the holder of it may apply to and compel the drawer to give him another bill (which, being a new contract, requires the appropriate stamp) of the same tenor, giving security to the drawer, if required, to indemnify him against all persons whatever, in case the bill alleged to have been lost is found again (see "CHEQUES"). In any action upon a bill, or even upon the debt contained in it, the Court or a judge may order that the loss shall not be set up, provided an indemnity be given, to the satisfaction of the Court or judge, against the claims of any other person upon the bill in question. Notwithstanding the loss of the bill the holder is bound to take any steps incumbent on him as such, and the loss of the bill will not excuse delay in giving notice of dishonour or protesting it when necessary, unless presentment for payment have been excused or dispensed with.

Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitute one bill. But if they be not so numbered each part of the set becomes a separate bill in the hands of a *bona fide* holder for value. Where the bills are numbered only one requires to be stamped, but otherwise each requires a separate stamp. A holder who indorses two or more parts to different persons renders himself liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if the parts were different bills. If two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, deemed to be the true owner of the bill; but the rights of a person who in due course accepts or pays the part first presented to him are not affected by any of these provisions. The acceptance of a bill in a set may be written on *any* of the parts, but it must not be written on more than one part, because if the accepted parts get into the hands of different holders in due course, the acceptor will be liable on each part as if it were a separate bill. The acceptor who pays the bill must have the part bearing his acceptance delivered up to him, because otherwise if that part is, at maturity, outstanding in the hands of a holder in due course, the acceptor will be liable to such holder. Subject to these provisions, if any one part of a bill in a set is discharged the whole bill is discharged.

CONFLICT OF LAWS.—Where a bill drawn in one country is negotiated, accepted, or payable in another, the rights, duties, and liabilities of the parties to it are determined as follows:—

Validity in Point of Form.—The validity of the *bill*, as regards requisites in *form*, is determined by the law in force at its place of issue; and the validity, as regards requisites in *form* of the supervening contracts, such as acceptance or indorsement, or acceptance *supra* protest, is determined by the law of the place where such contract is *made*. Thus, according to the law of the State of Illinois, a verbal acceptance is valid, and therefore a bill drawn in London on Chicago is validly accepted if it be accepted verbally there. But to this general rule there are two exceptions. A foreign bill is not invalid because it is not stamped in accordance with the place of issue, because such a bill may be after-stamped by a holder in the United King-

dom; and a foreign bill, if valid in point of form according to the law of the United Kingdom, may, for the purpose of enforcing it, be treated as valid between all persons negotiating, holding, or becoming parties to it in the United Kingdom.

The interpretation of the drawing, indorsement, acceptance, or acceptance *supra* protest of the bill, is subject to the provisions of the Act (*e.g.* that a bill is not, except in Scotland, an assignment of funds) determined by the law of the place where such contract is made. But if an inland bill is indorsed in a foreign country the indorsement is, *as regards the payer*, (but not other parties, *e.g.* payee) interpreted according to the law of the United Kingdom.

The duties of the holder with respect to presentment for acceptance or payment, and the necessity for and sufficiency of a protest or notice of dishonour or otherwise, are determined by the law of the place where the act is done or the bill is dishonoured.

The sum payable in a bill drawn out of, but payable in, the United Kingdom, and not expressed in English currency, is, in the absence of express stipulation, calculated according to the rate of exchange for sight drafts at the place of payment on the day the bill is payable.

The due date or date of payment in a bill drawn in one country and payable in another is determined by the law of the place where it is payable. Thus a London bill on Paris is not entitled to days of grace.

"Good Faith," Signature, and Computation of Time.—If any act connected with a bill be in fact done honestly, whether it be done negligently or not, it is deemed to be done in good faith. But a person who possesses the means of knowing that a bill has been stolen, or fraudulently obtained, is not acting in good faith if he wilfully disregard the means of knowledge in his power. The actual signature of a party to a bill is not necessary, and it is sufficient if his signature be adhibited by or with his authority (see Foster, 1869, L.R. 4 C.P. 704). In the case of a corporation it is sufficient if the bill be sealed with the corporate seal, though sealing is not essential. Where the time for doing an act connected with a bill is less than three days, in reckoning the time non-business days are excluded. Non-business days are—Sunday, Good Friday, Christmas Day (and if it be a Sunday, then the following Monday), Bank Holidays under the Bank Holidays Act 1871, and days appointed by Royal Proclamation as public fasts or thanksgiving days.

Stamp Duty.—The duty payable on a bill is regulated by the Stamp Act of 1891. Inland notes of all kinds, and inland bills payable otherwise than on demand, must be drawn upon paper impressed with the appropriate stamp, and they cannot be stamped after execution. Bills of exchange payable on demand must be stamped with a penny stamp; all others with an *ad valorem* stamp corresponding to the amounts for which they are drawn (*supra* p. 369). A bill written on material bearing an impressed stamp of sufficient amount, but of improper denomination, may be stamped with the proper stamp on payment of the duty and a penalty of forty shillings, if the bill be not then payable according to its tenor, or of ten pounds if it be so payable. Any one endorsing, transferring, negotiating, or presenting for payment a bill or note which is not duly stamped is liable to a fine of ten pounds; and any one taking or receiving such a bill or note for value, or otherwise, is not entitled to recover upon it, or to use it for any purpose whatever. Bills payable on demand, at sight, or on presentation, may be stamped with an adhesive stamp, which, if the bill be drawn in the United Kindgom, must be cancelled by the person who signs the bill before he

delivers it out of his hands, custody, or power. If such a bill be presented for payment unstamped, the person to whom it is presented may affix an adhesive stamp, cancel it, and pay the bill under deduction of the amount. This, however, does not relieve any person from any fine incurred by him in relation to the bill. Foreign bills do not require to be stamped before execution, but they must bear the appropriate stamp, which may be adhesive, and must be cancelled, before they can be presented for payment, indorsed, transferred, negotiated, or paid. If a bill bear an adhesive stamp effectually cancelled, the stamp is, as regards the holder, deemed to be duly cancelled, though it may not have been affixed or cancelled by the proper person, and if it be not cancelled, the holder may cancel it. But these provisions do not relieve any person from any fine incurred for not cancelling an adhesive stamp. Only one of a bill in a set requires to be stamped, and if the one which is stamped be lost, any other of the set may be produced in evidence to prove the contents of the lost bill. The protest of a bill also requires a stamp, which may be adhesive, and must be cancelled by the notary. Where the duty on the bill does not exceed one shilling, the duty on the protest is the same as that on the bill. In any other case it is a shilling.

ACCOMMODATION BILL.—An accommodation party to a bill of exchange is a person who has signed the bill as drawer, acceptor, or indorser, without receiving value therefor, and *for the purpose of lending his name to some other person.* The circumstance that a party has, in fact, received no value for the bill does not of itself make him an accommodation party. A bill to which there are one or more accommodation parties is an accommodation bill. The name is sometimes restricted to the commonest example of such bills, in which the acceptor signs for the accommodation of the drawer. It is presumed, in the absence of evidence to the contrary, that the acceptor is the person ultimately liable to pay the bill, and after him the drawer and the indorsers in the order of their indorsements; but evidence is admissible to show that any party, as between himself and a later party, or that the acceptor, as between himself and the drawer, is not so liable, and that as between such parties the bill is an accommodation bill. It makes no difference that a commission, or other consideration, has been paid to the accommodation party for the use of his name, if he has not received value for undertaking to *pay the bill.* An accommodation party ceases to be such if after becoming a party he receives value for the bill, so that, as between himself and the party accommodated, the latter is not ultimately liable to pay it.

An accommodation party is liable on the bill to a holder for value, whether the latter knew him to be such or not. But since he is, in fact, only a surety for the party accommodated, the holder of the bill, after having notice that this is the case, is bound by the ordinary rules, as to giving time to the principal debtor, and as to surrendering securities, etc., which spring from the relationship of creditor, debtor, and surety.

He can avail himself of any defence which is available for the party accommodated, for instance, set-off for a debt due to the latter from the plaintiff. Payment by the party accommodated in due course discharges the bill, so that, if it is afterwards reissued, the party accommodated cannot be sued by the holder.

If an overdue bill of exchange is negotiated, it is negotiated subject to any defect of title (or equity attaching to the bill) affecting it at its maturity: "After a long controversy, it now seems settled that mere absence of consideration is not an equity which attaches to a bill, but if there be an agreement, express or implied, not to negotiate an accommoda-

tion bill after maturity, the agreement constitutes an equity attaching to it." (Parr, 1855, 16 C.B. 684.)

Presentation for payment or acceptance and notice of dishonour are usually dispensed with, where it is sought to charge an accommodation party to a bill, namely, *presentation*, where he has no reason to believe or expect that the bill would be paid if presented, and *notice* without this condition, as regards the drawer, where the drawer or acceptor is not bound as between himself and the drawer to accept or pay the bill; as regards an indorser, where the bill was accepted or made for the accommodation of the indorser.

The party accommodated is bound to indemnify the accommodation party against his liability upon the bill, and this extends to the costs of actions brought against the latter upon the bill and reasonably defended. It has been decided that where an indorser, who was an accommodation party, paid the bill without having received due notice of dishonour, he could not recover from the party accommodated. In any case it is only where the accommodation party has full knowledge that he cannot be compelled to pay the bill that he is barred from recovering on the implied contract to indemnify.

RECOVERY OF AMOUNT OF BILLS IN SCOTLAND.—(1) *Summary Diligence.* —Nothing in the Act in any way extends or restricts or alters or affects the law and practice in Scotland relating to summary diligence. Diligence proceeds on an extract of the registered protest, which contains a warrant to charge the party liable on the bill to pay the sum contained in the bill, with interest and expenses, within six days if resident in Scotland, and fourteen days if resident furth of Scotland (see "Noting and Protest," *supra*). The diligence is competent at the instance of any holder whose title is *ex facie* of the bill (Fraser, 1853, 15 D. 756). It is competent, in the case of an accepted bill, against any party liable on it, provided due notice of dishonour be given to the party charged; and in the case of an unaccepted bill, against the drawer and prior indorsers, but not the drawee, even if he have funds in his hands available to meet it. Where a firm is the drawer, diligence is competent against any partner of the firm, though his name does not appear on the bill (Wallace, 1841, 3 D. 1047). It is competent on a bill signed by a notary, or Justice of the Peace, in presence of two witnesses, and on a householder's certificate of protest (see "Noting and Protest"). But it is not competent on a bill signed by the party's initials, or by mark; nor on an undated bill, or one wanting in a material particular; nor on one irregular in form, or *ex facie* vitiated or altered; nor on a bill accepted conditionally; nor on a lost bill, or one past due, found in the holder's repositories torn up (Thomson, 1850, 12 D. 1184); nor on an imperfect bill not completed (see "Filling up Bills"); nor on a bill so long as an ordinary action on it is proceeding. The charge must conform strictly to its warrant, and be executed against the parties named in the protest. The debtor may bring a suspension of a charge, or a threatened charge, on a bill, but he must, as a condition of having the note passed to try the question, find caution, or consign the sum in the bill, unless the bill appears *ex facie* vitiated, altered, or forged, etc.

(2) *Evidence in Judicial Proceedings on Bills.*—In any judicial proceedings *in Scotland* any fact relating to a bill, cheque, or promissory note which is relevant to any question of liability thereon may be proved by parol (or verbal) evidence. This provision has occasioned some difficulty, and no authoritative decision as to its exact meaning has yet been pronounced (see

Nat. Bank of Australia, 1891, 18 R. 629; Gibson's Trs. 1896, 23 R. 414; New Lon. Credit Syndicate, 1898, L.R. 2 Q.B. 487; Anderson, 1898, 1 F. 90); but it has been held that proof of the payment of a bill is not a fact relevant to a question of liability on it, and therefore it is incompetent to prove payment by parol (Robertson, 1900, 3 F. 5). But the provision does not in any way alter the existing law and practice whereby the party who is, according to the tenor of the bill, cheque, or promissory note, debtor to the holder in the amount thereof, may be required as a condition of obtaining a sist of diligence or suspension of a charge, or threatened charge, to make such consignation, or to find such caution as the Court or Judge, before whom the case is depending, may require.

LIMITATION AND PRESCRIPTION OF BILLS AND NOTES. — Bills of exchange and promissory notes in England belong to the class of simple contracts, *i.e.* contracts not under seal, and remedy by action on them is therefore entirely barred by the lapse of six years. The effect of the statute of limitations is not to destroy the debt, but only to bar the remedy. A foreign statute of limitations would not be recognised by an English court unless it absolutely extinguished the contract at a time when the parties were living in the foreign country. A transferee recovering the bill after the expiration of the period of limitation is barred by the statute. The period of limitation begins to run from the time when the right of action first accrues to the party. When the bill is payable at a fixed time the period will run, not from the date of drawing or acceptance, but from the time when the bill fell due. On a bill drawn at sight, therefore, the period will not begin to run until presentment, and if drawn at a certain period after sight, not until the expiration of that period after presentment (*In re* Boyne 33 Ch. D. 612; Thorpe Ry. and M. 388). On a bill payable on demand the period will, however, run from the date of drawing, or from the date of delivery if that was later, and not from the date of the demand (*In re* George, 44 Ch. D. 627), but if payable at a certain period after demand the effect will be the same as if payable at a period after sight. If a bill be dishonoured both by non-acceptance and non-payment the period will run from the non-acceptance. If a bill is payable on the extinction of a specified period, three days of grace, unless the bill provides otherwise, are to be added to the period fixed for payment, and the cause of action only accrues on the last day of grace, and the period of limitation does not commence to run until then. No action can be brought until after the expiration of the last day of grace (Kennedy, 1894, 2 Q.B. 759; Dechène, 1894, A.C. 640). The operation of the statute of limitations will be prevented by service of a writ in an action on the bill provided the action is followed out to judgment. The statute does not apply in the case where the plaintiff is an infant, or a lunatic, or the defendant is beyond the seas (*i.e.* be out of the United Kingdom of Great Britain and Ireland, or the Isle of Man, or the Channel Islands, or the adjacent islands). In those cases action to prevent the operation of the statute may be brought within six years after majority, recovery, or defendant's return to England. When a disability is removed and the statute once begins to run no supervening disability will stop it.

The action of the statute may also be prevented by (1) acknowledgments of indebtedness, or (2) part payment.

(1) *Acknowledgments.*—By Lord Tenterden's Act these must be in writing, but need not be stamped unless they amount to a promissory note. It must contain an express promise to pay or an unconditional acknowledgment of the debt from which such an express promise

may be implied. No particular form of words is necessary, but each acknowledgment must be construed for itself by the Court, not by the jury.

(2) *Part Payment.*—By judicial interpretation of the Statute of Limitations, part payment of principal or payment of interest takes the debt out of the operation of the statute, and the effect of such a payment is recognised and preserved in Lord Tenterden's Act. The principle of the doctrine of part payment or payment of interest is that any such payment is an acknowledgment of the existence of the debt, and from it the law raises an implication of a promise to pay the residue. Payment by an agent has the same effect as payment by a principal. The payment need not be actually made in money, but any mutual settlement of cross demands by the statement of a balance will take the case out of the statute (Ashby, 11 M. and W. 542). Payment of interest is in general sufficient to take the principal out of the statute. Payment of money into Court will not take the bill or note out of the statute, except as to the amount paid in. No indorsement or memorandum of any payment written or made upon a bill by or on behalf of the party to whom such payment is made is sufficient to defeat the operation of the statute. In order to take advantage of the statute it must be specially pleaded, and an acknowledgment or payment obviating the statute must also be specially pleaded

(3) *Prescription.*—In Scotland by statute there is a special limitation for bills known as the Sexennial Prescription. It is in its main features very similar in effect to the operation of the English Act. The lapse of the six years, however, does not take away the remedy by action, but merely destroys the special character of the bill, or note as such, leaving it merely a written order or promise to pay a certain sum. The debt in respect of which the bill or note was given remains, and may be sued for; but after the lapse of six years the proof thereof is limited to a writing of the debtor on his oath.

Bills by and to Limited Companies.—A company with limited liability under the Companies Acts must have its name mentioned in legible characters in all bills, notes, indorsements, and cheques purporting to be signed by it, or on its behalf (Companies Act of 1862, sec. 41). If any director, manager, or officer of the company, or any person on its behalf, signs, or authorises to be signed, any bill, note, indorsement, or cheque whereon its name is not so mentioned, *i.e.* the correct name (*Atkins* v. *Wardle*, 1889, 58 L.J.Q.B. 377) with the word "limited" (*Penrose* v. *Martyr*, 1858, El., Bl. and El. 499) he is liable to a penalty of £50, and is also personally liable to the holder of the bill, note, etc., for the amount of it unless it is duly paid by the company (Companies Act 1862, sec. 42). A bill is deemed to be made, accepted, or indorsed on behalf of a company if so made, etc., in the name of the company, or by or on behalf or on account of the company by any person acting under its authority (Companies Act 1862, sec. 47). Thus if the signature is "A. B., C. D., directors of the company," to which the bill is addressed, A. B. and C. D. are not, but the company is, liable on the acceptance (*O'Kell* v. *Charles*, 1876, 34 L.T. 822). As to what is a sufficient indication that the signatories sign only on behalf of the company cf. *Dutton* v. *Marsh*, 1871, L.R. 6, Q.B. 361, and *Alexander* v. *Sizer*, 1869, L.R. 4, Ex. 102. As to the power of a limited company to contract by bill see *supra*, "Capacity," p. 374. Section 47 of the Companies Act 1862 does not give every company under the Act such power, but the power exists where, on a fair construction of the memorandum and articles of association, it appears that it was intended to be conferred (*Peruvian Railway Co.* v. *Thames; etc., Insurance Co.*, 1867, L.R.

2, Ch. 617). The authority of a manager to accept, etc., bills on behalf of the company where it is not expressly conferred can only be implied from the ordinary course of the company's business or by being necessary to the exercise of other powers conferred on him (*In re Cunningham and Co.,' Lim.*, 1887, 36 Ch.D. 532). The liquidator of a company in a winding-up may accept, etc., bills without the sanction of the Court (Companies Act, 1862, secs. 95 and 133; Companies Act of 1890, sec. 12).

AUTHORITIES—**English.**—*Byles on Bills*, Sixteenth Edition; *Chalmers on Bills of Exchange*, Sixth Edition; *Chitty on Bills*. **Scotch.**—*Thomson on Bills of Exchange*, Third Edition; *Thorburn on Bills of Exchange*.

WILLIAM WALLACE.

Bills, Sexennial Prescription of, in Scotland.—The Act 12 Geo. III. c. 72, secs. 37 and 39, which was designed to extend to Scotland the benefits of the English Statute of Limitations (21 James I. sec. 16), on the preamble that "the not limiting bills and promissory notes to a moderate endurance in that part of Great Britain called Scotland has been found by experience to be attended with great inconveniences," enacts "that no bill of exchange or promissory note, executed after the 15th day of May 1772, shall be of force, or effectual to produce any diligence or action in that part of Great Britain called Scotland, unless such diligence shall be raised and executed, or action commenced thereon, within the space of six years, from and after the terms at which the sums in the said bills or notes become exigible. . . . Provided always that no notes commonly called bank notes or post bills issued or to be issued by any bank or banking company, and which contain an obligation of payment to the bearer, and are circulated as money, shall be comprehended under the aforesaid limitation or prescription; and that it shall and may be lawful and competent, at any time after the expiration of the said six years, in either of the cases before mentioned, to prove the debts contained in the said bills and promissory notes, and that the same are resting-owing, by the oaths or writs of the debtors." The effect of the statute therefore is not to introduce a presumption of the payment of the bill at the expiry of the six years, but to limit the mode of proof in a particular manner. During the six years the bill proves itself, and the *onus* of proving that no value was given for it or that it has been paid lies upon the debtor, who can only prove his averments by writ or oath. But the statute provides that at the expiry of six years the bill ceases to exist as a document of debt, the bill no longer proves itself, and the burden of proving that the debt represented by the bill is still "resting-owing" falls upon the holder, who must prove the debt by the writ or oath of the debtor. At the end of the prescriptive period of six years, without action or diligence commenced or done upon it, which *alone* can elide the prescription, the bill ceases to exist as a document of debt, and not only the debt but its resting-owing must be proved extrinsically of the document (Darnley, 1845, 7 D. 595; Campbell's Trs. 1895, 22 R. 943; see also Scott, 1828, 7 S. 192; Stirling, 1830, 8 S. 638; Kerr's Trs. 1883, 11 R. 108; Bell's *Com.* i. 419). But the bill may be competently produced as an adminicle of evidence, as the original voucher of a debt which may still be proved, but only by the writ or oath of the debtor (Campbell's Trs. *supra;* Christie, 1833, 11 S. 744), and it ought to be referred to in the summons (Drummond, 1848, 10 D. 340; Milne's Trs. 1893, 20 R. 523). If the pursuer succeeds in proving the constitution of the debt and its resting owing, he does not thereby set up the bill anew, but he does set up the debt, which then be-

comes subject only to the long negative prescription (Drummond, 1880, 7 R. 452).

Interruption of Prescription.—To elide the prescription and preserve the bill from its operation, diligence must be "raised and executed" or an "action" commenced within the statutory period. Mere admission of the debt, or anything which might be construed as an equivalent, is not sufficient (see Blair, 1858, 21 D. 45; Watson, 1822, 1 S. 371; Scott, 1828, 7 S. 192; Hunter, 1831, 9 S. 703; Buchanan, 1840, 2 D. 1444; Cochran, 1841, 4 D. 76). The death of the creditor is not sufficient (Cullen, 1853, 15 D. 868). The diligence must be *complete*, not merely threatened (Bell's *Com.* i. 419; Fraser, 1831, 9 S. 723). An action to be "commenced" must have a summons and its execution formal and complete (Baillie, 1790, M. 11286), but if once "commenced" the interruption will not be affected by the action going to sleep (Denovan, 1845, 7 D. 378). "Action" means any process in which judicial decision or the decree of an arbiter (Vans, 14th June 1816, F.C.) can be given (Lindsay, 1854, 16 D. 600; Bankruptcy Act 1856, sec. 107; Ross, 1855, 17 D. 1144; *cf.* Macdonald, 1826, 5 S. 28). Interruption against one of several co-obligants on a bill, or against one partner in a multiple-poinding relating to the co-partnery, or two of several heirs-portioners, is interruption against the other co-obligants, partners, or heirs-portioners respectively (Gordon, 1784, M. 11127; National Bank, 1837, 16 S. 177; Paxton, 1842, 4 D. 1515). So interruption against an indorser or acceptor of a bill is interruption against the drawer (M'Lachlan, 1831, 9 S. 753; Roy, 1850, 12 D. 1028).

Proof of the Constitution of Debt and its Resting-Owing.—The holder must prove extrinsically of the document not only that value was given for it, but that there still subsists a legal obligation on the part of the debtor to pay the sum contained in it. Where the bill is granted in payment of a sum previously due, the existence of that prior debt at the date of granting the bill need only be proved (Drummond, 1848, 10 D. 340; Campbell's Trs. *supra*). The debt must be one which would constitute valuable consideration for a bill (Clarkson's Trs., 8th June 1820, F.C.; Fraser, 27th June 1809, F.C.). A writ merely admitting the subsistence of the debt, but not amounting to a reconstitution of it, during the subsistence of the prescriptive period, is not sufficient to prove resting-owing (Buchan, 1787, M. 11128; Allan, 1817, Hume 477; Russell, 792, M. 11130; M'Tavish, 1825, 3 S. 472; Blair, 1859, 21 D. 1004; Blake, 1860, 23 D. 15).

Writ or Oath of Debtor.—To instruct the constitution and resting-owing of the debt, the debtor's writ need not be probative, nor need it disclose the specific sum given in consideration of the bill (M'Gregor, 1860, 22 D. 1264). Any writing by the debtor, capable of being unequivocally referred to the debt (Couper, 1849, 12 D. 190; Watson, 1841, 3 D. 583; Wood, 1843, 5 D. 507; Campbell's Trs. *supra*), written after the lapse of the six years and acknowledging the subsistence of the debt, either expressly or by implication, is sufficient (Russell, 1792, M. 11130; Mackenzie, 1827, 5 S. 367; Elder, 1830, 9 S. 133; Blair, 1859, 21 D. 1004). If the writing founded on admits a debt to be due, and the defender makes no allegation of the debt to which it applies, the pursuer may prove the connection of the writ to the debt *prout de jure* (Fiske, 1860, 22 D. 1488; Stevenson, 1849, 11 D. 1086). Entries in the debtor's books, acknowledgments by his factor or agent, or even letters and receipts of the *creditor* preserved by the debtor and found in his repositories have been held equivalent to the debtor's writ (Black, 1823, 2 S. 118; Campbell, 1839, 1 D. 1061; M'Gregor, *supra*; Wood, 1843, 5 D. 507; Rennie, 1880, 7 R. 1030; Campbell's Trs. *supra*). The writ of one partner,

unless it be that of a partner who has sole management of the business (Gow, 1827, 5 S. 472), or of one co-obligant, will not bind another partner or co-obligant, since at the expiry of the six years the bill ceases to exist as such (M'Indoe, 1824, 3 S. 295; M'Nab, 1843, 5 D. 1014; M'Neill, 1849, 11 D. 979; *cf.* Nisbet's Tr. 1829, 7 S. 307). The procedure in a reference to defender's oath is similar to that in any reference to oath, and on the subject of the interpretation of oaths on reference generally, the remarks of Lord Deas in Coubrough, 1879, 6 R. 1301, and the cases there referred to, may be cited. When owing to the defender's death a reference to his oath is impossible, a reference to the oath of his representative or trustees is permissible (Murray, 1827, 5 S. 515; and see Wood, *supra*, and Mounsey, 1896, 33 S.L.R. 438).

Limitations of the Prescription.—The Act 1772, c. 72, sec. 40, provides that "the years of the minority of creditors in such notes or bills shall not be computed in the said six years." Only the minority of the actual creditor can be pleaded (M'Neil, *supra;* Patrick, 1859, 21 D. 637). The debtor's outlawry has no effect (Brodie, 20th February 1821, F.C.).

Terminus a quo.—The prescription runs from the date on which the bill becomes payable, that is, in bills payable on demand, at sight, or on presentation, from the date of the bill, in bills payable at a future date, from the last day of grace, and in bills payable so many months after notice, on the last day of the month so specified (Douglas Heron and Co. 1793, M. 4602; Stephenson, 1807, M. App. 20; Broddelius, 1887, 14 R. 536).

International Law.—The prescription applies to all bills, wherever drawn or accepted, where redress is sought in the Scots Courts (Don, 1837, 2 S. and M'L. 682). (See generally Ersk. *Inst.* ii. 7, 29; Bell's *Com.* i. 418; Bell's *Prin.* 594-99; Thomson on *Bills*, 457; Dickson on *Evidence*, 433-471; Millar on *Prescription*, 161-177.)

WILLIAM WALLACE.

Bi-Metallism.—The employment of two metals to form a standard of value and the medium of exchange is called bi-metallism. The two metals usually considered are gold and silver. To be effective as a system of currency there must be an open mint ready to coin any quantity of either gold or silver which may be brought to it, and every debtor must have the right to discharge his liabilities in either of the two metals at a ratio fixed by law.

Birth-Rate.—The ratio of the number of births per annum to the total number of persons under consideration.

B/L.—Contraction for Bill of Lading.

Black List is a list of persons against whom the compiler of the list endeavours to warn the public or a special section of the public; a list of persons unworthy of credit or with whom it is not advisable to deal. Thus the official list of defaulters on the Stock Exchange is a black list, so is *Stubb's Gazette* and other periodicals. Many societies or associations issue to their members a list of persons who have been adjudicated bankrupt, or against whom a judgment or decree for debt has gone out, with the view of protecting such members from incurring bad debts.

Blank Bill is a sheet of paper impressed with a bill stamp duly signed, or a bill otherwise in order but having no amount filled in. Where

a person receives a blank sheet of paper impressed with a stamp, in order that such person may convert it into a bill, it operates as *prima facie* authority to fill up the bill to the amount which the stamp will cover, using the signature for that of the drawer, or the acceptor, or an endorser.

Blank Indorsement.—When a bill of exchange is indorsed by the drawer or by the holder of the bill signing his name on the back of it, without the addition of any words, making the bill payable to a particular person, the bill is said to be indorsed in blank, and is practically a bill payable to bearer. The bill is then negotiable by mere delivery.

Blank Transfer.—A deed assigning property in shares or other registered securities in which the transferee's name is left blank. The certificate of the security to which the transferee refers should be delivered at the same time. The transfer is not of any effect until it has been duly registered.

Blench.—A Scots law term analogous to petit sergeantry. Lands held blench are held subject to the payment of a merely nominal debt which is payable only if demanded within a year.

Board.—A body of men associated together for the transaction of some particular business. The term is applied to the directors of the management of a company, and also to certain Government departments, such as the Board of Trade, Board of Inland Revenue, the Local Government Board, and the School Board. In the case of a joint stock company the rules regulating the conduct of the board are to be found in the Companies Acts, in the particular deed by which the board itself is constituted, and in the general laws and practice of the country.

Board of Agriculture.—The Board of Agriculture for Great Britain was re-established on 12th August 1889 by the Board of Agriculture Act passed in that year. The board consists of the Lord President of the Council, the different Secretaries of State, the First Commissioner of the Treasury, the Chancellor of the Exchequer, the Chancellor of the Duchy of Lancaster, the Secretary for Scotland, and such other persons as may be appointed. Any member of the Privy Council may be the President of the Board.

Board of Trade.—The Board of Trade has charge of the commerce generally of Great Britain. The various departments are shortly as follows:—

1. The Commercial Department, which deals with commercial questions and provides the statistical abstracts of trade. A monthly journal is published containing much useful commercial information.
2. The Railway Department, established in 1840, inspects railways and other means of conveyance by land, before they are opened, and also reports upon them when powers are applied for to construct them.
3. The Marine Department, established in 1850, has charge of the regulation of passenger steamers, the examination of masters and mates, and other questions relating to ships and their crews, including the detention of unseaworthy ships, and inquiries into wrecks.
4. The Harbour Department has charge of fore-shores belonging to the Crown, and protects harbours and channels.

5. The Finance Department deals with the accounts of all branches of the Board of Trade, and also with life assurance companies' accounts and bankruptcy estate accounts.

6. The Fishery Department deals with all questions connected with sea fisheries, including salmon, oyster, and lobster fisheries.

Body Corporate or Corporation. — An artificial or legal person which preserves its identity and the rights conferred on it through a perpetual succession of natural persons. Sole corporations are those composed of one person; aggregate corporations are composed of two or more persons. Corporations are also divided into ecclesiastical and lay. Of lay corporations the most important are municipal corporations and trading companies. Corporations are created either by charter or by Act of Parliament, but some base their existence on prescription.

Bona Fide.—Literally, in good faith. A *bona fide* purchaser is a genuine purchaser, that is, not one to whom a gift has been made in the form of a sale. In connection with bill transactions a *bona fide* holder for value, without notice, is a holder in due course.

Bond.—A deed by which a person called the obligor binds himself to another called the obligee, to pay a certain sum unless he performs an obligation specified in the deed by a clause which is called the condition of the bond. Bail Bonds are Bonds of Security to keep the peace. Bonds of Security for costs in actions are used when securities are to be given to a public authority. Bonds of Guarantee are also made out in this form. The word is also used for certain Stock Exchange securities, and in that connection is equivalent to debenture or obligation, meaning the promise to pay a sum borrowed by the corporation who issue the security; such bonds are sometimes secured by a charge on special property.

Bond and Disposition in Security is the Scotch equivalent for mortgage of real estate.

Bond for Cash Credit.—Bonds of credit were in their inception peculiar to Scotland, and were introduced by the Royal Bank about the year 1727. Generally stated, a cash credit is an ordinary operative account opened in name of a customer upon which he may operate as on an ordinary current bank account, with this advantage, that interest is only charged on the sums that may from time to time be standing at the debit of the account and not on the amount stated in the bond. As at present in use, such bonds are of two kinds—(1) bond of credit with personal security, and with or without moveable security included; and (2) bond of credit and disposition in security.

Bond of Credit with Personal Obligation.—Such bonds are in the form of personal obligations, and proceed on the narrative that the whole granters thereof have obtained a credit for a specified sum with a particular bank in name of one of their number; and that they bind and oblige themselves and their heirs conjunctly and severally to repay to the bank up to the amount of the specified sum such sum as may be due to the bank on the account, including interest, whether the amount has been drawn out by the holder or be due by him in respect of bills, drafts, cheques, etc. The practical effect of the bond is that, up to the limit specified, the bank may include in the account all the liabilities to them of their customer.

It was at one time doubted whether, if a banker did not enter a bill to the debit of the cash credit at the time of discounting, he could afterwards do so; or, if the bill was not truly for the benefit of the holder of the credit, whether this could be done at all. It has, however, been decided that a banker is entitled to debit the account with the whole obligations of the principal debtor, whether such advance has been made directly on the security of the bond or was not at the time specifically brought into the account (Bell's *Com.*, M'Laren's edition, vol. i. p. 386). It may here be noted that the obligation of a married woman as a co-obligant in a cash credit bond is not binding on her, and the consent of her husband to the obligation being undertaken does not alter the position of matters (*Jackson* v. *M'Diarmid*, 1892, 19 R. 528). So far as liability to the bank is concerned, no distinction is made between the obligants who are severally liable; it is as though the drafts on the account had been signed by each of them, the person in whose name the account is kept and who operates upon it being in law regarded as the mandatory of the others. But before the obligants can be so made liable, the bank if called upon must be able to produce a voucher for each debit to the account, signed by or with the authority of the person authorised to operate on it from at least the last signed docquet. Hence in one case where the bank, without any order from the principal obligant, transferred a sum to the credit of an old cash account in name of the same principal debtor, and debited a new cash credit therewith, it was held that the obligants on the new credit were not liable for the sum so transferred (*Paterson* v. *Bonar*, 1844, 6 D. 995). The result would have been otherwise, and the bank would have gained the same end, had they obtained a cheque from the principal obligants for the amount so transferred. When the credit is for behoof of a company or firm, or when a firm or co-partnership are the co-obligants, special provision is made that no death, retirement, substitution, or addition of any partner or partners, or no dissolution or change in the co-partnery, shall affect the obligation contained in the bond.

Commencement of Obligation and Position of Bank with regard to Principal Obligant.—The obligation of the co-obligants under a bond of credit is not properly constituted unless and until the bond is delivered to the bank as a completed deed. Hence a charge on a bond was suspended against a co-obligant on the ground that while the bond bore to be granted by four persons, it was only signed by three of them (*Paterson* v. *Bonar*, 1844, 6 D. 987). It is also necessary to the due constitution of the obligation of the co-obligants that, besides signing the bond, they are all alive at the date of the delivery of the deed to the bank, for it has been decided that if one of the parties who has signed it should die before delivery, his executors are not responsible for any sum advanced, the implied mandate to deliver the deed having fallen by the death (*Life Association of Scotland* v. *Douglas*, 1886, 13 D. 910). There is the further duty upon the bank to see that the signatures of the obligants are genuine, as in the event of the signature of one or more of the co-obligants being forged the result in law is to free not only the person whose signature is so forged, but also all the other co-obligants, of all liability to the bank under the deed (*Scottish Provincial Assurance Company* v. *Pringle*, 1858, 20 D. 465). The principal debtor remains liable apart from the bond.

A co-obligant who enters into a bond on behalf of another is presumed to have satisfied himself of that other's financial condition. Consequently, it has been decided that a bank is not bound to disclose to a surety the particular application of the money which is to be advanced, even though

it should be intended for the repayment of an existing credit. If the cautioner wishes to limit the application of the money obtained under a bond he must so stipulate with his principal, and secure himself by some private obligation or penalty against failure to comply with it, for a bank is neither bound nor entitled to inquire into the application of a draft made upon a cash credit which they may have granted. The party is the best judge of how he ought to apply his cash credit, and having granted the credit the bank is bound to answer the draft without inquiry. In like manner the bank cannot be called upon to refuse payment if the holder wishes to apply it in paying a debt due to themselves.

Sum Due stated to be Payable on Demand: How Sum Fixed.—The bond provides that the sums due under it up to the specified amount shall be payable on demand, with interest, and that any account or certificate signed by an official of the bank shall ascertain, specify, and constitute the sums or balances of principal and interest to be due, and shall warrant all executorials of law for such sums or balances, and interest, whereof no suspension shall pass but on consignation. The practical effect of these provisions is not that the account may be kept in any way the bank thinks fit. The account must be kept in the ordinary course of business and in the usual way in which a cash account is kept: the certificate of the bank official provided for is not conclusive evidence between the parties, rebutting evidence being competent in proceedings under a suspension (*Gilmour* v. *Finnie*, 1831, 9 S. 907). The stipulation that no suspension is to pass except on consignation is not effectual, as it is an interference with the discretionary power inherent in the Court; and while no doubt such a stipulation will receive due weight from the Court, it will not be allowed to interfere with the principles of law and justice. The co-obligants are not liable for any sum in excess of the limit of the credit with the interest thereon from the date of the last balance of the account, but the principal obligant still remains bound for any debit balance apart from the bond.

Sum for which Co-Obligants are Liable.—The amount for which the co-obligants are liable is the specified sum, "with interest on such sums severally at the rate of," etc. The question, whether the sums debited for interest remain interest throughout the account, for which the obligants are liable under the clause above stated, underwent careful consideration in the case of *Reddie* v. *Williamson* (1863, 1 M. 228); and the decision there given has been followed and approved in a series of cases (*Commercial Bank* v. *Pattison's Trustees*, 1891, 18 R. 476, and cases there referred to). The principle may be thus concisely stated: At the annual balance the interest accrued during the past year is added to the principal sum due, and the whole balance brought out is carried forward to the next year's account. The interest thereafter becomes principal, loses its character of interest, and is in the same position as if a cheque for the amount had been passed on the account by the holder. The rule of law as to the accumulation of interest with principal was thus stated by the Lord President in *Reddie* v. *Williamson* (*supra*): "The privilege of a banker to balance the account at the end of the year, and accumulate the interest with the principal, is founded on this plain ground of equity, that the interest should then be paid, and because it is not paid the debtor becomes thenceforth debtor in the amount as a principal sum itself bearing interest." While this is so, the bank is not bound to accumulate the interest with the principal on an account the holder of which has become insolvent, whether by his estates being sequestrated, by compounding with his creditors, or by granting a trust deed for their behoof. In the event of insolvency the bank is entitled

to go back to the balance immediately preceding such event, and to charge interest from that date (*Gilmour* v. *Bank of Scotland*, 1880, 7 R. 734). The mere fact of a company going into voluntary liquidation does not seem to have the same effect (*Commercial Bank, supra* — opinion of Lord Ordinary).

Legal Position of Co-Obligants.—Although those who are in truth cautioners subscribe as principal obligants, and the technical term "cautioner" is not used, they are nevertheless entitled to the equities of cautioners, though not to the benefit of their legal privileges, such as the prescription applicable to cautionary obligations, the law being that wherever it appears from the nature of the transaction, as set forth in the deed, that certain of the obligants, though subscribing as principals, are merely cautioners, the obligants are entitled to the rights of cautioners not only in a question with the principal debtor, but also in a question with the creditor (*Fleming* v. *Royal Bank*, 1825, 4 S. and D. 224; 2 W. and S. 27). Where cautioners are bound jointly and severally the creditor is entitled to call upon any of the sureties for payment of the full amount due, and the surety so paying is entitled as against his co-sureties to recover their rateable proportion of the amount paid. In the event of one of the sureties being bankrupt, the solvent sureties are liable for his share of the deficiency. Where the principal is unable to pay and one of the sureties is bankrupt, it is competent for the creditor to rank upon and recover a dividend from the bankrupt's estate on the full amount of his claim, whereas if the creditor call upon a solvent surety to pay, such surety, if he does pay, can rank upon the estate of the bankrupt only for his share of the amount paid under the obligation. Where the creditor ranks upon the estate of an insolvent surety for the full amount of his debt, so long as the dividend received does not exceed the share which in ordinary course would fall to be paid by the bankrupt surety, the co-sureties cannot be called upon by the trustee to pay any part of the dividend received by the creditor on his claim as lodged.

Power of any Co-Obligant to withdraw from Obligation.—Unless the credit has been granted for a specific purpose which has not been fulfilled, or for a specified time which has not elapsed, any one of the co-obligants may at pleasure intimate to the bank that he desires to withdraw from the credit. On receipt of such intimation the bank's duty is to stop further operations on the account. Should they fail in this and continue to disregard the intimation, the result is that while any sum paid into the account after the date of the intimation will be held as a reduction of the amount due as at such date, any sum drawn out of the account cannot be charged against the co-obligants, as the first item on the debit side is held to be discharged or reduced by the first item on the credit side. The course which ought to be followed by the bank on receipt of such an intimation is to stop further operations on the account under the credit and call for a settlement. If so advised they may, however, open a new account in the principal's own name and allow operations thereon. The principles just stated will not apply to such new account.

Termination of Credit and effect of Death of Co-Obligant.—While the death of the principal obligant necessarily brings the credit to an end, it is otherwise in the case of individual sureties. Their obligation is held to be a continuing one, and therefore capable of transmission to their representatives. Thus upon the death of an individual co-obligant his estate is liable in repayment not only of such sums as may be due at the time of death, but also of any sums drawn out after the surety's death, and that whether or

not the deceased's representatives had notice of the existence of the bond (*British Linen Co.* v. *Monteith*, 1858, 20 D. 557). A bank is entitled, provided that it does not act capriciously and gives due notice of its intention to the principal obligant, to bring the credit to an end at any time, even though it has not been operated upon to the full extent (*Johnston* v. *Commercial Bank*, 1858, 20 D. 557).

Diligence on Bond.—In the event of its being found necessary to proceed with diligence against any of the obligants, the bond with the relative certificate as to the amount payable should be recorded in the Books of the Lords of Council and Session, and an extract thereof may then be obtained which grants warrant for all lawful execution thereon. On this warrant arrestment can be used at once, but if a poinding of the debtor's effects or proceedings by way of sequestration be deemed necessary, a charge for payment must first be given.

Bond of Credit and Disposition in Security.—At common law no security can be effectually constituted over lands or other heritable subjects for debts or burdens of an indefinite or fluctuating amount, and hence a difficulty is created in making the ordinary bond and disposition in security available as cover for overdrafts on a current account (*Smith, Sligo, and Co.* v. *Dunlop and Co.*, 1885, 12 R. 907). To remedy this defect it was provided by 54 Geo. III. c. 137, sec. 12, and re-enacted by 19 & 20 Vict. c. 91, sec. 7, after the repeal of the former statute, that heritable securities may be given for cash accounts, or for the relief of cautioners in cash accounts, on condition that the principal sum and interest to become due under the bond is limited to a certain definite sum to be specified in the security, not exceeding the amount of principal and three years' interest at five per cent. By the latter statute the heritable security subsists to the extent of the sum limited, or any less sum, until the cash account is finally closed and the balance paid up and discharged. In *Forbes* v. *Welsh and Forbes* (1894, 21 R. 630), Lord Low (Ordinary) expressed the opinion that a heritable bond for a principal sum with interest, the rate not being specified, did not constitute a valid security *quoad* the interest as imposing a burden of indefinite amount, but opinions on the point in the Inner House were reserved.

The deed is in the form of an ordinary bond of credit with the addition of a disposition to certain specified heritable subjects in security. The security may be conveyed by persons other than the holder of the credit, in which case such persons are entitled to the rights and equities of cautioners. While in terms of the Act the subjects conveyed in security can only be made available for the repayment of the specified amount of principal and three years' interest at five per cent, the personal obligation contained in the bond can be enforced for the repayment of whatever sum is due, and summary diligence taken therefor as in the case of a bond of credit with personal security.

The heritable property conveyed in security can be realised in the same manner as that conveyed in a bond and disposition in security.

ALLAN M'NEIL.

Bond of Caution. *See* CAUTIONARY OBLIGATIONS.

Bond of Corroboration is, in Scotland, a bond given in further security.

Bond of Relief is, in Scotland, equivalent to an indemnity given to a surety.

Bonded Warehouse.—A warehouse in which articles subject to duty are lodged under bond for the payment of any revenue duties chargeable thereon.

Bonus.—A bonus in shares is sometimes paid to proprietors as supplementary to the regular dividend, and is generally derived from the undivided profits of former years, or from profits derived from exceptional circumstances or transactions. The question of whether a bonus in shares belongs to the life-renter of the shares or to the person ultimately entitled to the shares is a somewhat difficult one, and rules have been laid down by the House of Lords (*Bouch* v. *Sproule*, Law Reports, 12 Appeal Cases, 385). The word bonus is used by insurance companies to denote the additions made to the sums payable under life policies.

Book-keeping.

BOOK-KEEPING DEFINED 408
BOOK-KEEPING, ITS USES 409
BUSINESS TRANSACTIONS 409
AN ACCOUNT 410
FORMS OF LEDGER ACCOUNTS 410
THE LEDGER 411
CLASSIFICATION OF LEDGER ACCOUNTS 411
METHOD OF RECORDING BUSINESS TRANSACTIONS IN A LEDGER ACCOUNT 412
BALANCING ACCOUNTS 413
BALANCING ACCOUNTS BY THE METHOD OF MAKING UP THE BALANCE BY ADDITION 414
DEBIT AND CREDIT 414
1. *Entries in Property Accounts* 414
2. *Entries in Personal Accounts* 415
3. *Entries of Profit and Loss* 415
ASSETS 416
LIABILITIES 416
CAPITAL 416
PROFIT 416
LOSS 416
DISCOUNT 417
SUSPENSE ACCOUNT 417
MODEL SET OF TRANSACTIONS 417
I. BUSINESS TRANSACTIONS RECORDED USING LEDGER ONLY . 419
THE TRIAL BALANCE EXPLAINED 425
LEDGER ACCOUNTS BEFORE MAKING CLOSING ENTRIES . . 426
TRIAL BALANCE AS AT 31ST DECEMBER . . . 428
CLOSING ENTRIES 429
PROFIT AND LOSS ACCOUNT EXPLAINED . . . 430
METHOD OF CLOSING THE FOLLOWING ACCOUNTS—
Wages Account 430
Rent Account 431
Taxes Account 431
Insurance Account 431
Discount Account 431
CLOSING THE PROFIT AND LOSS ACCOUNT . . . 432
CLOSING THE OTHER LEDGER ACCOUNTS . . . 432
BALANCE SHEET EXPLAINED 434
COMPLETED LEDGER ACCOUNTS 434
THE CONNECTION BETWEEN THE TRIAL BALANCE, PROFIT AND LOSS ACCOUNT, AND BALANCE SHEET . . . 437

Trial Balance, Profit and Loss Account and Balance Sheet in one Connected Statement . . . 439
Practical Book-keeping 438
II. Business Transactions recorded as they might be in Actual Practice 438
1. The Cash Book Explained 440
2. The Invoice Book Explained 442
Form of Columnar Invoice Book . . . 443
3. The Day Book Explained 443
4. The Bills Receivable Book Explained . . . 443
5. The Bills Payable Book Explained . . . 444
6. The Journal Explained 444
7. The Ledger; its Subdivision 445
(1) The Customers' Ledger 445
(2) Creditors' Ledger 445
(3) General Ledger 445
8. The Private Ledger 445
9. The Returns Inwards Book Explained . . . 445
10. The Returns Outwards Book Explained . . . 446
11. Petty Cash Book Explained 446
Form of Petty Cash Book 447
Books of William Marshall based on Transactions given on page 418 448
III. Practical Book-keeping further Developed . . 454
The Columnar Cash Book Explained . . . 454
The Invoice Book Explained 455
The Day Book Explained 455
The Journal Explained 455
The Ledgers:—
(1) Customers' Ledger Explained . . . 455
(2) Creditors' Ledger Explained . . . 456
(3) General Ledger Explained 456
Cash Book and Ledgers with Transactions recorded therein 458
The Private Ledger Explained by Model Set of Transactions . 462
Transactions during Year 466
Cash Book 467
Day Book 468
Invoice Book 468
Customers' Ledger 468
Creditors' Ledger 468
General Ledger 469
Journal 470
Private Journal 471
Private Ledger 472
Consignment Accounts 474
1. Consignor's Books 475
Model Set of Transactions 475
Account Sales 475
Cash Book 476
Day Book 476
Invoice Book 476
Journal 476
Ledger 477
Consignment Ledger 478
General Ledger 478
Charges paid on Consignments 479
Receipt of Account Sales 479
Treatment of Consignments at Stock-taking . . . 479

2. Consignee's Books 480
Cash Book 480
Journal 480
Ledger 480
Charges paid by Consignee 481
Consignments Sold 481
Commission 481
Payments by Consignee to Consignor . . . 481
Joint Accounts 481
Outstanding Charges 486
Method of Treatment:—
First Method 487
Second Method 487
Third Method 487
Treatment when preparing a Profit and Loss Account and Balance Sheet 488
Single Entry Book-keeping 489
How to arrive at the Profit or Loss where the Books are incomplete 489

Book-keeping may be defined as the art of recording business transactions and showing their effect upon wealth. By means of it the business transactions of an individual or of a company are not only recorded so as to show the fact of each transaction, but also so as to exhibit the results of a series of business transactions upon the individual or company's wealth. To those engaged in trade or in commercial pursuits, book-keeping is absolutely essential, as, by it, their transactions are recorded as they take place, and the effect of all these transactions in the aggregate upon their wealth is ascertained at convenient intervals. Book-keeping enables us to find out the general results of a business, but in addition the component parts of a business may be analysed and the result of each department of the business, or even of each individual transaction, may be shown. One of the incidental advantages of book-keeping is that it encourages any one to be methodical, both in thought and action, and is a most valuable training in this direction. It thus promotes honesty, not only in the owner of any business but also in the members of his staff. The want of a knowledge of elementary book-keeping and accounting is the cause, to a large extent, of the failures and frauds which are so frequently before our Bankruptcy Courts. Official receivers and trustees in bankruptcy are continually bearing testimony to the number of failures which are due to the want of a knowledge of book-keeping and of the elementary principles of finance. The theory of book-keeping is indeed very simple, and, with perseverance, any one of average intelligence can master the main principles. There is thus no excuse for any one, whether in business or out of it, not acquiring a working knowledge of the principles of book-keeping, and thereby being able to take an intelligent grasp of his own affairs and of the financial position of all sorts of concerns.

It is of the utmost importance that the method of book-keeping adopted for any business should be simple, but it must, at the same time, be effective. It must not merely satisfy the owner of the business, but be quite clear to any one who may have occasion to refer to the books. It is not sufficient that a trader keeps his books to his own satisfaction, but they should be so kept that, in the event of an outsider having to examine them, the outsider can readily understand them and be able to gather from them the manner in which any transaction has been recorded, and the effect of all the transactions.

Any one engaged in business, who wishes to conduct it with ordinary intelligence and according to business methods, must keep his books so that he may get from them all the particulars and information which he requires. Among the general points are the following:—

1. He requires to have a complete record of every transaction he has in connection with his business.

2. He requires to know exactly what his obligations are, and how far his capital and credit will enable him to extend his business.

3. He requires to ascertain the result of his commercial dealings as regards the component parts of his business and of his business as a whole.

4. He also requires to know the position of his affairs from time to time.

While to those engaged in trade a knowledge of book-keeping may be considered as absolutely essential, even to those not so engaged a knowledge of it is of immense value. Under its guidance, those with independent incomes are not only prevented from spending more than they should, but are enabled to take an intelligent interest in the various concerns in which their money may be invested.

Book-keeping is progressive, and has made great strides within recent years. Cumbrous forms and antiquated methods are being superseded by the more modern methods, the aim of which is to obtain the maximum of result with the minimum expenditure of time and labour. The Italians, to whom book-keeping owes so much, have largely adopted a system called Logismography, under which, by means of an adaptation of the columnar method, the labour of keeping accounts is much reduced, and all the advantages of book-keeping are obtained in the speediest manner.

The omission to keep proper books is punishable to a slight extent under the law of this country; but under the French commercial code the penalties are much more severe, and more trouble is taken to see that proper books are kept by each trader.

As book-keeping is the art of recording business transactions, with the view of having a permanent record of them and of seeing the effect of business transactions upon wealth, it is necessary to consider, in the first place, what are business transactions.

Business Transactions

Business transactions are dealings involving the exchange of one kind of property or value for another. Thus, one kind of goods may be exchanged for another kind of goods or for money. Money is the medium of exchange, as well as the standard of value, and most business transactions involve the exchange of what is valuable for money. As economics is the science of exchanges, book-keeping may be defined as the art of recording exchanges. In book-keeping exchanges are called business transactions, and each such transaction involves the giving and receiving of value. Exchangeable values may be grouped into:—

1. Values of a tangible nature, such as land, buildings, machinery, goods, cash, etc.

2. Values for the use of values of a tangible nature, such as rent and interest. The rent of a warehouse is paid for the use of the warehouse merely, and the ownership does not change. In the same way interest is paid for the use of money belonging to a lender.

3. Services. Thus, wages are paid to a workman as the value of his services, and fees are paid to accountants as the value of their services.

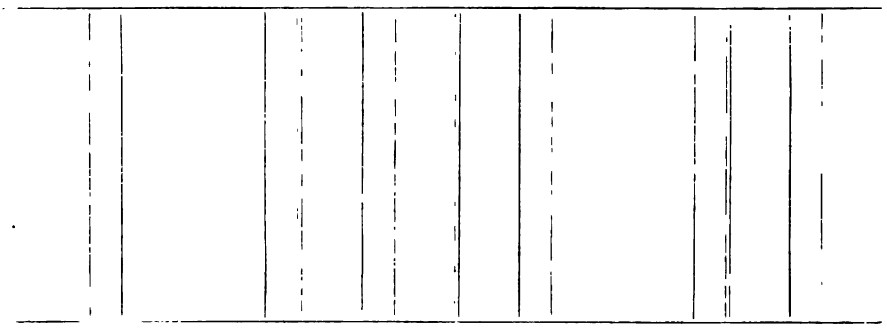
All these values may be exchanged in a great number of ways, but the chief medium is money, which is the accepted medium of exchange.

Each business transaction has two distinct aspects when looked at from the point of view of the person recording the transaction, or of the person in connection with whose business the transaction has taken place. These two aspects may be regarded as the cause and effect; and therefore any system of recording business transactions must, if it is complete, record these two aspects. These two aspects may also be regarded as the origin and the destination. It is also useful to some arithmetical minds to consider them as positive and negative aspects of the same transaction. In recording these two aspects of a business transaction, accounts are used containing a debit side and a credit side. Thus, cash received from a customer is placed to the credit of the customer's account in respect of its origin, as he must be credited in respect of the cash he has paid, and to the debit of the cash account, in respect of its destination. These two accounts are affected to an equal extent but in opposite directions, and these directions may be spoken of as negative and positive. This rule holds for all transactions. If one account has to be credited, there is another account which has to be debited, and it is this principle which has given rise to the phrase "book-keeping by double entry." The name is unfortunate, because book-keeping must be by double entry, and the so-called book-keeping by single entry is simply incomplete book-keeping. All transactions, then, are recorded in a system which is composed of individual accounts.

An Account

An account is a statement of business transactions of a certain kind, which are analysed or classified into a complete statement, to show their effect upon the subject of the account. These accounts show the effect of the transactions by classifying the records of the business. The usual form of ledger account is as follows:—

Dr. Usual Form of Ledger Account *Cr.*

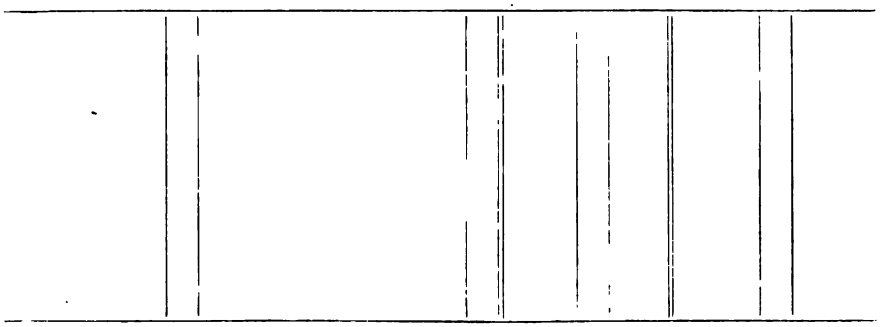


The left half of the account is called the debit side, and the right half the credit side. It is usual, although not necessary, to head the two sides of an account with the contractions Dr. and Cr., as shown in the example. Both sides of the account are, in the form given above, ruled in the same manner, and each contains a date column, a space for the name or source of the entry, a column for the folio of the book of original record from which the entry is made, and a money column for the amount.

Another form of ledger account is that given below, where the columns for the date, particulars, and folio are the same for both debit and credit entries, and where the cash only has separate columns. The first money

column is for debit entries, and the second money column is for credit entries. The two forms of ledger accounts given are the usual ones in practice, and it is important to observe that their essential feature is the separate money column for debit and credit entries.

ALTERNATIVE FORM OF LEDGER



THE LEDGER

The ledger is the book in which are contained the accounts of business transactions. It is the book—or it may be books—in which are the accounts relating to a series of business transactions, wherein these transactions are analysed and recorded so as to show the effect of each transaction and the effect of the transactions as a whole. The ledger is the most important book in book-keeping. In fact, it might be the only book used; and when once its function has been thoroughly grasped, the respective places occupied by all the other books, and the uses of these books, will be clearly understood.

The writing up of the ledger is called "posting," and ledger entries are sometimes referred to as "postings." Ledger accounts are sometimes divided into:—

1. Real accounts; that is, accounts relating to tangible assets, such as buildings, plant, and cash.
2. Personal accounts; that is, accounts with persons.
3. Nominal or fictitious accounts; that is, accounts relating to non-tangible values or accounts which do not represent assets or liabilities, such as accounts of wages, rent, etc.

The words "nominal" and "fictitious" are somewhat unfortunate, as the wages and such-like accounts of a business are usually anything but nominal or fictitious, and a better division appears to be—

1. Property or real accounts; that is, accounts relating to tangible assets. The expression "property accounts" is not ideal, but it is retained in the absence of a better.
2. Personal accounts; that is, accounts with persons, including the bank account, capital account, and bills receivable and bills payable accounts.
3. Profit and loss accounts; that is, accounts relating to values which will eventually appear in the profit and loss account of a business.

The heading to each account should be so clear and unmistakable that any one can understand it at once, so that there may be no chance of any entries being posted to it except such as should be there. In the case of personal accounts there is little difficulty, as these are headed with the name of the person, together with his designation and address. In the case

of other accounts a descriptive heading may be necessary. Thus, in a business where rents are both received and paid it may be necessary to keep two accounts, one headed "Rents Paid" and the other headed "Rents Received." Similarly, while it is usual to keep only one account for goods, in some businesses it is found preferable to keep one account for "goods purchased" and another account for "goods sold." This simplifies the treatment of the goods which are returned either *by* the business or *to* the business. Goods returned to the business having originally been credited to the "goods sold account," are debited to that account when returned; and goods returned by the business are credited to the "goods purchased account," having originally been debited to that account.

Method of Recording Business Transactions in a Ledger Account

The method of recording business transactions in a ledger account is somewhat technical, and will be best followed by taking a few simple transactions. Suppose I have the following transactions during the month of January with A. Ross:—

Jan.	3.	A. Ross purchases goods from me on credit for . . .	£100	0 0
„	15.	I pay out for A. Ross in cash	5	0 0
„	25.	He gives me in cash	70	0 0
„	30.	A. Ross purchases goods from me on credit for . .	60	0 0

My ledger account with the heading A. Ross should record these transactions, and should show the balance due by him at the end of the month as follows:—

A. Ross

Dr.						*Cr.*				
Jan.	3.	To Goods . . .	£100	0	0	Jan. 25.	By Cash . . .	£70	0	0
„	15.	„ Cash . . .	5	0	0	„ 31.	„ Balance . . .	95	0	0
„	30.	„ Goods . . .	60	0	0					
			£165	0	0			£165	0	0
Feb.	1.	To Balance . . .	£95	0	0					

The left side of this account is headed Dr., the contraction for debtor, and is called the debtor or debit side. The right side of the account is headed Cr., for creditor, and is the creditor or credit side of the account. If on 3rd January I gave goods to A. Ross on the understanding that he is at some future time to pay me £100 for them, it is evident that so far as that single transaction is concerned he is indebted to me for these goods to the extent of £100; accordingly this £100 is debited to his account in my ledger. The entry is read—

A. Ross debtor to goods . . . £100 0 0

Similarly with the other entries. The first entry on the Cr. side is read—

A. Ross creditor by cash . . £70 0 0

To balance this account at the end of the month both sides are added up in pencil. The debit side comes to £165 and the credit side to £70. The difference between the two sides, namely £95, is entered on the less side, which is the credit side. The total of both sides, £165, is then inserted in ink, and the balance is carried down to the debit side under the date 1st February, the fiction being that the books are closed on the last moment

of the month of January and opened on the first moment of the month of February. The above balance of £95 is called a debit balance, as the debit side is greater than the credit side before the account is balanced, and shows that A. Ross is indebted to me or is due me £95 at the close of the month.

The above account is a personal account, being an account with a person, and the reason why it is debited or credited is very easily seen. In the case of an account that is not a personal one the reason for debiting and crediting is not so readily seen. Thus, suppose I have the following cash transactions:—

Sep.	3.	I receive from H. Smith	£100	0 0
„	4.	I buy goods for cash	20	0 0
„	5.	I pay for rent	45	0 0
„	19.	I receive for goods sold	15	0 0

So far as the changes in my cash are concerned these transactions would be recorded as follows:—

Cash

Dr.								*Cr.*			
Sep.	3.	To H. Smith	£100	0	0	Sep.	4.	By Goods	£20	0	0
,,	19.	,, Goods	15	0	0	,,	5.	,, Rent	45	0	0

It will be observed that all receipts of cash have been entered on the debit side, and all payments of cash have been entered upon the credit side. In explanation of this, and to remember on which side of the cash account to place the cash which comes in, we may remember that we must first get in cash before we can pay it out; and therefore all cash which comes in is naturally put upon the debit or first side, reading from left to right. Another way to explain it is to consider that the cash account is the cashier's account, and accordingly any cash which he receives he is debited with, because he receives it from us or on our behalf, and is indebted to us for it. If these are all my transactions for the month of September, and if I had no cash at the beginning of the month, it is evident that the balance at the close of the month is the amount of cash I have on hand. There is always a debit balance on the cash account if there is a balance at all, because more cash can never be paid away than is received.

Balancing Accounts

In balancing accounts a transverse line is often drawn across the space for the entry, and sometimes across the space for the amount. The best method of doing this is shown in the following example. The object of drawing this transverse line is to prevent a further entry being made in error in the space after the account has been ruled off and the total inserted. Accounts should never be squared off until the balance, if any, has been carried down to begin the next year with.

A. Murray

Jan.	14.	To Cash	£278	0	0	Jan.	5.	By Goods	£40	0	0
„	27.	,, Goods	29	0	0	,,	8.	,, do.	160	0	0
,,	31.	,, Balance	353	0	0	,,	25.	,, do.	200	0	0
						,,	26.	,, do.	150	0	0
						,,	28.	,, do.	50	0	0
						,,	31.	,, do.	60	0	0
			£660	0	0				£660	0	0
						Feb.	1.	By Balance	£353	0	0

Balancing Accounts by the Method of making up the Balance by Addition

Acting on the well-known fact that addition is easier than subtraction, the best method of finding the balance on most accounts is to find the difference between the two sides of a ledger account by means of "making up" the two sides to the same amount. The method will be best followed by an example. The following are the figures on the two sides of A. Murray's account, given above:—

£278 0 0	£40 0 0
29 0 0	160 0 0
	200 0 0
	150 0 0
	50 0 0
	60 0 0

It is at once seen that the creditor side is the greater, and accordingly the balance will be a credit one, and the amount will fall to be entered first upon the debit side. Adding up the credit side, we find it comes to £660, and we place this upon the credit side and also in its proper place upon the debit side. Then we add up the debit side, and, at the same time, ascertain the balance by finding out how much is required to make the debit side agree with the credit side. Thus the units on the debit side come to 17, and to have 0 in the addition we put 3 as the unit figure in the balance and carry 2 (since $17 + 3 = 20$). The tens $(2 + 7 + 2)$ come to 11, and to have 6 in the addition we put 5 in the balance and carry 1 (since $11 + 5 = 16$). Then to make the hundreds add 6 we put 3 in the balance. This method of finding the balance should always be adopted.

Debit and Credit

It has been shown that in most cases it is comparatively easy to determine which account should be credited and which account should be debited, but occasionally the reason for debiting or crediting some account is not so clearly seen. If any particular transaction is considered, it will be found, as a rule, much more easy to determine one side of the ledger to which the amount should go than the other side. Thus, if £10 in cash is paid for wages, it may be somewhat difficult to arrive at the fact that wages should be debited, but it is easily seen that the cash account should be credited, as the cash has gone out. Accordingly, in practice the easiest entry should always be made first, and to make the opposite entry it is only necessary to fix on the account which will be debited or credited according as the former account has been credited or debited. What may be called the universal rule for which side of a ledger account an entry should be made is as follows:—

Debit the account which represents the value which has *come in.*

Credit the account which represents the value which has *gone out.*

The application of this rule may be now shortly considered in relation to the various accounts in the order in which they have been classified.

1. *Entries in Property Accounts*

In the case of property accounts there is no difficulty in determining when value has come in and when it has gone out. In the case of the cash

account, which is an example of a property account, the cash which is received appears on the debit side, and the cash which is paid away is entered on the credit side. In the case of the goods account, which is another example of a property account, all the purchases appear on the debit side and all the sales appear on the credit side. It is important to observe that it is not necessary that the goods should have actually come into the warehouse or gone out of the warehouse, but merely that the purchase or the sale should have been completed, that is, that value should have come in or should have gone out. Thus, if goods are purchased, immediately the bargain is completed, although the goods themselves have not come in, the goods account should be debited because the value has come in so far as the business is concerned. If goods come in merely with the view of being sold, and are still at the owner's risk, then no entry is made in the goods account, because no value has been added to the business. But, on the other hand, if goods belonging to the business are lost or have depreciated, then the goods account should be credited, because value has gone out. The reason for debiting and crediting the cash and the goods accounts is very happily explained by supposing that the cash and goods are kept for the business by a cashier and a storekeeper, whose accounts are represented by the cash and goods accounts. The cashier and the storekeeper are accordingly indebted to the business for what they receive and get credit from the business for what they give out.

2. *Entries in Personal Accounts*

The reason for debiting and crediting personal accounts is much more readily understood than the reason for debiting and crediting property accounts. If I send goods to John Smith it is clear that he is indebted to me for the price of these goods, and accordingly his account in my ledger must be debited. Similarly, if I receive goods from A. Ross on credit he thereby becomes my creditor for the goods, and his account should accordingly be credited with the price. This explanation of the matter is very satisfactory and easily followed, but at the same time the rule as to value in and value out applies. Thus if John Smith gets goods, value has come into the business in the shape of the obligation which he is under to pay me the price, and accordingly his account should be debited. The rule therefore holds that in the case of personal accounts, when value comes into the business by the person represented by the account his account should be debited, and when value goes out it should be credited.

3. *Entries of Profit and Loss*

The profit from a business is the reward for the labour of the proprietor and for his capital. If we consider it as value which the owner of the business has given out we see at once that the rule, that value which comes in should be debited and that value which goes out should be credited, applies. Thus the fees and commissions account in the books of an accountant represent his skill and labour, and accordingly when that skill and labour *go out* the fees account falls to be credited, and either the cash or his clients debited. Similarly the wages account and other charges incurred in carrying on a business represent value which has *come in* in that form, and all these items appear on the debit side of the respective accounts. In the case of all sub-divisions of the profit and loss account, therefore, what is profit appears on the credit side, and what is loss or charges incurred in carrying on the business appears on the debit side.

Assets

Assets consist of property having exchange value, or property that may be used to extinguish liabilities. Property means a right pertaining to an individual. Purely personal property, such as individual skill or ability, while a valuable personal asset, is not a business asset available to liquidate the liabilities of an individual. Business assets—that is, assets employed in connection with commercial transactions—are very numerous, and may be grouped as follows:—

1. Cash assets, including money, bank notes, and cheques on other people's banking accounts.

2. Material assets other than money. These may be grouped into:—

(*a*) Permanent assets, such as land, also buildings and houses, so far as they are permanent.

(*b*) Wasting assets, such as less permanent buildings and houses than could be included under the first head, machinery, furniture, raw material, goods and merchandise, ships, horses, etc.

3. Debts receivable or abstract rights and claims, such as claims and debts due, including bills receivable, copy rights, patent rights, annuities, investments in shares and stocks, etc.

Assets should, as a rule, be stated in the order of their realisability into cash.

Liabilities

A liability of a business is an obligation which the proprietor of the business is under to pay a sum of money. The sum of money is the measure of the obligation. Shortly stated, liabilities are the sums due by a business to outsiders. Following the principle laid down in the case of assets, the liabilities of a business should, as a rule, be stated in the order in which they can be enforced against the business. Thus, there may be liabilities which are past due, and the creditors represented by the obligations may be pressing for payment. A liability may be preferential, that is, one which must be paid before the ordinary creditors are satisfied, such as rates and taxes, and salaries to a certain extent. There may also be debts which have just become due, and others which will not be due for some years, such as loans for a fixed period. Some liabilities may have no time fixed for their repayment, such as the debenture stock of a company, where no time has been fixed for the repayment of the debentures.

Capital

The capital of a business at a particular moment of time may be defined for purposes of accounting as the surplus of the assets of the concern over the total liabilities to the creditors. This definition does not apply to joint-stock companies, in which the capital is defined by Act of Parliament.

Profit

The profit made from a business during any particular time is the amount by which the capital of the business has increased as the result of business transactions during the period.

Loss

The loss made by a business during any particular period of time is the amount by which the capital in the business has decreased as the result of business transactions during the period.

Discount

There are two kinds of discount in ordinary business, namely, trade discount and cash discount. Trade discount is an amount written off the nominal price of goods and is usually shown on the invoice, and does not depend in any way upon the date of the payment of the goods.

The best way of dealing with discount is to have a separate column or columns in the cash-book for it. By this means, in place of many entries being made in the discount account in the ledger, the monthly or even quarterly totals of the discount columns are entered.

Sometimes two accounts are kept for discount, one for discount allowed to customers and the other for discount received from creditors.

Suspense Account

A Suspense Account is an account opened for the purpose of having posted to it items of which the book-keeper is unable for the time to determine the proper destination or the account to which they should be posted. A Suspense Account should be used as seldom as possible, and should never be used when any other account can conveniently be employed. Its employment is justified in such a case as where a bank-note or post-office order is received in an envelope without the address of the sender, and when there is no means of immediately ascertaining by whom the money has been sent. A Suspense Account should not be used where money is received from a traveller to account of his transactions. The proper course in such a case is to open an account in the name of the traveller, and place the sum to his credit, although the words "suspense account" may be added to the heading of the account. Similarly, if £10 is given to a clerk to pay accounts, the clerk should be debited with the amount, and when it is known what accounts have been paid he should be credited with the amounts. Even when there is doubt as to whether we should bear some expense or whether some outsider should bear it, it is much better to raise a descriptive heading than simply use the phrase "Suspense Account."

Model Set of Transactions

The general scope of book-keeping and some of its principles and technical terms having been explained, its methods may now be more fully gone into. This is best done with the aid of a model set of transactions. These transactions are supposed to be spread over a year, and represent the transactions of a merchant buying and selling goods. They are of the simplest kind, and only one or two typical transactions of each kind have been included, so as to make the set as short as possible. The transactions are first treated in a purely theoretical manner by means of the ledger only, and the fullest explanations are given of each step. They are next treated as they might be in actual practice, and a very satisfactory method of book-keeping is evolved. Finally, they are treated as they might be in actual practice with all the improvements and developments of modern book-keeping. While the transactions are very simple, any one who thoroughly understands the method in which they are treated, as now given, will have a competent knowledge of book-keeping, and should be able to apply its principles under any circumstances which could possibly

arise. The model set of transactions and other particulars required are as follows:—

WILLIAM MARSHALL

STATEMENT OF AFFAIRS as at 1st January.

Assets.				*Liabilities.*			
Due by F. Mackie	£400	0	0	Due to Glen & Day	£200	0	0
Goods in stock	800	0	0				
Cash in bank	100	0	0				
Cash on hand	50	0	0				

His transactions during the year were as follows:—

Jan.	1. Bought goods from Glen & Day	£100	0	0
	2. Gave Glen & Day a bill at two months	300	0	0
	8. Sold goods for cash	150	0	0
	10. F. Mackie settles his account for £400 by paying cash	380	0	0
	Discount allowed him	20	0	0
	31 Bought goods for cash	60	0	0
	Paid into bank	300	0	0
Feb.	1. Bought goods from Glen & Day	200	0	0
	Sold goods to John Scott	150	0	0
	28. Paid Glen & Day in settlement of their account for £200, cheque for	190	0	0
	Discount allowed by them	10	0	0
Mar.	1. Sold goods to John Scott	80	0	0
	Bought goods from R. Rennie	200	0	0
	2. Sold goods to F. Mackie	300	0	0
	3. Received bill at three months from F. Mackie	300	0	0
	Discounted above bill, receiving in cash	297	0	0
	Discount charged	3	0	0
	5. Paid bill due to-day in cash	300	0	0
	8. Drew cash from bank	100	0	0
	11. Bought goods from R. Rennie	200	0	0
	31. Received bill at two months from John Scott	230	0	0
Apr.	7. Settled R. Rennie's account to the extent of £200 by paying him in cash	80	0	0
	Cheque	110	0	0
	Discount allowed by him	10	0	0
	28. Paid wages in cash	40	0	0
	30. Bought goods from R. Rennie	300	0	0
	Sold goods to F. Mackie	100	0	0
May	6. Gave R. Rennie bill at six months	300	0	0
	9. Sold goods for cash	500	0	0
	Paid into bank	250	0	0
	11. Sold goods to John Scott	100	0	0
	15. Goods returned by John Scott	10	0	0
	Paid insurance in cash	5	0	0
	Paid taxes by cheque	10	0	0
June	3. Received payment of bill due to-day	230	0	0
	30. Sold goods to John Scott	200	0	0
	And received bill at six months for same	200	0	0
	Paid to account of year's rent of £80, in cash	45	0	0
	Bought goods for cash	50	0	0

July	1.	Bought goods from Glen & Day	£300	0	0
	2.	Returned goods to Glen & Day, value	50	0	0
Aug.	1.	Paid wages in cash	10	0	0
	31.	Bought goods from R. Rennie	200	0	0
		And gave him bill at six months	200	0	0
Nov.	9.	Paid bill for £300 due to-day by cash	200	0	0
		And cheque for	100	0	0
	14.	Sold goods to F. Mackie	400	0	0
Dec.	31.	Paid further to account of rent by cheque	30	0	0
		Sold goods for cash	300	0	0
		Cash taken by William Marshall for his own use	100	0	0

Trial Balance to be taken at this stage

Dec.	31.	Value of goods on hand at cost price	450	0	0
		Wages due to date	10	0	0
		Rent accrued to date unpaid	5	0	0

I. Business Transactions recorded, using Ledger only.

In order to open ~~a set~~ of accounts, William Marshall has taken stock and the results of his stock-taking are exhibited in the Statement of Affairs at 1st January. On the one side there are placed all his assets, and on the other all his liabilities. It is obvious that if William Marshall wishes to keep proper accounts, his first duty will be to enter his assets and liabilities in his ledger, and so record his Statement of Affairs as at 1st January in his books.

Assets at 1st January.

In the case of persons in business, assets consist of everything in the business which is available or which may be made available for the payment of debts. The proprietor of a business having set aside certain of his assets for the purposes of a particular business becomes thereby a creditor of the business to the value of these assets. He brings certain assets into the business or hands them over, as it were, to the business, and he must get credit for doing so. Accordingly, all the assets given in the example are posted to the credit of an account which is headed with his name, William Marshall, and the words "Capital Account." Having been posted to the credit of this Capital Account, they must, in order to complete the record, be posted to the debit of the various accounts in the ledger which represent these assets. This debit entry may be explained on the principle that value has come in to the business. An account is opened for "F. Mackie," who is debited with £400 on the principle that he must be debited because value has come into the business at some previous time and is still in existence, or because since F. Mackie is due £400 he should be debited with that amount as he is indebted to or debtor to William Marshall for it. An account is opened for "Goods," and debited with £800, as that value of goods is in stock at the date of opening the account. Bank is debited with £100, and cash with £50. It will thus be seen that when a ledger is opened for the first time *all the assets should be credited to the Capital Account and debited separately to the individual accounts representing the assets.* Assets thus appear as debit balances, and it will be seen later on that after the Profit and Loss Account of a business has been prepared all the debit balances again represent assets.

Liabilities.

Every debt or obligation due by a person in business, which is connected with his business, should be shown in his books. The liabilities are debited to the proprietor's Capital Account, as he brings these liabilities into the business, and so is indebted to the business for taking them over. All the liabilities having been debited to Capital Account, each individual liability is credited to accounts headed with the various names of the creditors of the business.

In the example given, Glen & Day being the only creditors, their account in the ledger is credited by making the entry "Jan. 1. By capital, £200," and the Capital Account is debited by making the entry "Jan. 1. To Glen & Day, £200." Liabilities thus appear as credit balances, and after the Profit and Loss Account of a business has been prepared, all the credit balances represent liabilities.

Jan. 1. *Bought Goods from Glen & Day,* £100.

As the goods which represent the value, so far as the Goods Account is concerned, have come in, the Goods Account falls to be debited; and as value has gone out of the business so far as Glen & Day are concerned by the incurring to them of an obligation, their account must be credited. Another way to look upon this is to consider that, as the goods were purchased on credit from Glen & Day, their account must be credited. The entry in the Goods Account is "To Glen & Day, £100," and in Glen & Day's account, "By Goods, £100"; and this rule of each entry in each account referring to the name of the account where the opposite entry will be found is carried out through the entire ledger, so that by simply referring to one entry we know at once in which account the opposite entry is to be found.

Jan. 2. *Gave Glen & Day a Bill at Two Months,* £300.

The meaning of this transaction is that Glen & Day have requested William Marshall to acknowledge his indebtedness to them to the extent of £300 by signing his name to a piece of stamped paper. Glen & Day may write out a request to William Marshall to pay them £300, which William Marshall accepts or agrees to do by signing his name across it or under Glen & Day's signature. In this case the piece of stamped paper is called an "Acceptance," and might be in some such form as the following:—

Stamp
3s.

LONDON, *2nd January* 19....

Two months after date pay to us or our order the sum of Three hundred pounds sterling, value received.

GLEN & DAY.

To Wm. Marshall.

Or William Marshall may send a promise to pay, in which case the

piece of stamped paper is called a promissory note. This might be in the following form:—

Stamp
3s.

LONDON, *2nd January* 19....

Two months after date I promise to pay Messrs. Glen & Day or their order the sum of Three hundred pounds sterling, value received.

WM. MARSHALL.

It is quite evident that the fact that William Marshall has granted a bill for £300 must be recorded in his books, so he accordingly debits Glen & Day (as they received the bill) and credits Bills Payable with £300. The liability is simply transferred from Glen & Day's Account to Bills Payable Account.

Jan. 8. *Sold Goods for Cash,* £150.

The cash having come in, is entered on the debit side of the cash account, and the goods having gone out, the goods account is credited.

Jan. 10. *F. Mackie settles his Account for* £400 *by paying Cash* £380. *Discount allowed him,* £20.

If F. Mackie's account is referred to in the ledger it will be observed that at this date there is a debit balance of £400. In order to wipe this out of the books two credit entries are made:—

By cash . . . £380
„ discount . . . 20.

As £380 was all the cash that was received, this amount is entered to the debit of the cash account, and the discount account is debited with £20.

Jan. 31. *Bought Goods for Cash,* £60.

Cash is credited as cash went out, and as goods come in the goods account is debited with £60.

Jan. 31. *Paid into Bank.*

The cash having gone out, the cash account is credited, and the bank account is debited, as the bank received the cash and are therefore indebted to William Marshall.

Feb. 1. *Bought Goods from Glen & Day,* £200.

The goods account is debited, while Glen & Day are credited with £200.

Feb. 1. *Sold Goods to John Scott,* £150.

The goods having gone out the goods account is credited; and as John Scott received the goods he is debited with £150.

Feb. 28. *Paid Glen & Day in settlement of their Account for* £200, *Cheque for* £190. *Discount allowed by them,* £10.

The balance on Glen & Day's Account at this date is a credit balance of £200, and in order to square this account off, two entries are made on the debit side:

To bank . . . £190
„ discount . . . 10.

As the bank paid away the money, they are credited with £190, and the discount account is credited with £10.

Mar. 1. *Sold Goods to John Scott,* £80.

The goods account is credited and John Scott is debited with £80.

Mar. 1. *Bought Goods from R. Rennie,* £200.

The goods account is debited as the goods come in, and as R. Rennie gives them to William Marshall on credit, R. Rennie's account is credited with £200.

Mar. 2. *Sold Goods to F. Mackie,* £300.

F. Mackie is debited and goods account is credited with £300.

Mar. 3. *Received Bill at Three Months from F. Mackie,* £300.

F. Mackie either sends his promissory note or accepts a bill drawn on him by William Marshall. When the bill is received, it is entered on the debit of the bills receivable account, and as F. Mackie is the person who gave it, his account is credited.

The transaction simply means that, instead of a debit item in an open account (such as the item of £300 in F. Mackie's Account previous to receiving the bill), there is now a debit item in the bills receivable account.

Mar. 3. *Discounted above Bill, receiving in Cash* £297. *Discount charged,* £3.

After the previous transaction was recorded, the bill for £300 appears as a debit item in the bills receivable account. Now, William Marshall takes this bill to his bankers, and, in respect that he gets ready money for it before it is due, he has to pay £3 as interest or discount on the bill. The £297 cash having been received it is entered to the debit of cash and to the credit of bills receivable account. The discount charged is also credited to the bills receivable account and debited to discount account. The effect of these transactions is that the bill is wiped out of the books and cash is shown for it.

It is interesting to notice that the asset goods has gone through a series of changes. From the goods account it was debited to F. Mackie, and appeared as an asset on open account. From an asset due on an open account it was changed to an asset due on a bill receivable, and from an asset due on a bill receivable it was changed to an asset in cash.

Mar. 5. *Paid Bill due to-day,* £300.

This bill is the bill granted on January 2 to Glen & Day, and as it appears as a liability on bills payable account, that account is debited and the cash account credited with £300.

Mar. 8. *Drew Cash from Bank,* £100.

The cash having come in and the bank having paid it away, the cash account is debited and the bank account credited with £100.

Mar. 11. *Bought Goods from R. Rennie,* £200.

The goods account is debited and R. Rennie is credited with £200.

Mar. 31. *Received Bill at Two Months from John Scott,* £230.

There is a debit balance of £230 on John Scott's account, and by receiving a bill from him this balance is converted to a balance on bills receivable account. The bills receivable account is accordingly debited and John Scott is credited with £230.

April 7. *Settled R. Rennie's Account to the extent of* £200 *by paying in Cash* £80, *Cheque* £110. *Discount allowed by him,* £10.

In order to wipe out the credit balance of £200 on R. Rennie's account, three entries are made on the debit:

To cash . . .	£80
„ bank . . .	110
„ discount . . .	10

The cash account is then credited with £80, bank with £110, and discount with £10.

April 28. *Paid Wages in Cash,* £40.

The cash account is credited and wages account is debited with £40. It may be well to point out here that it is evident that this £40 posted to the debit of wages is a charge against the profit from the business.

April 30. *Bought Goods from R. Rennie,* £300.

The goods account is debited and R. Rennie is credited with £300.

April 30. *Sold Goods to F. Mackie,* £100.

F. Mackie is debited and goods account is credited with £100.

May 6. *Gave R. Rennie Bill at Six Months,* £300.

R. Rennie is debited and bills payable is credited with £300.

May 9. *Sold Goods for Cash,* £500.

Cash is debited and goods account is credited with £500.

May 9. *Paid into Bank,* £250.

The bank is debited and cash credited with £250.

May 11. *Sold Goods to John Scott,* £100.

John Scott is debited, and the goods account credited with £100.

May 15. *Goods returned by John Scott,* £10.

In this case goods have come in, so that the goods account is debited with £10; and as John Scott returned the goods he gets credit by crediting him with £10.

May 15. *Paid Insurance in Cash,* £5.

The cash account is credited and insurance account debited with £5. This represents a charge.

May 15. *Paid Taxes by Cheque,* £10.

The money having been paid away by the bank, the bank account is credited and taxes account debited with £10.

June 3. *Received Payment of Bill due to-day,* £230.

The cash account is debited as cash comes in, and the bills receivable account is credited because the amount of the bill was at the debit of this account.

June 30. *Sold Goods to John Scott,* £200.

John Scott is debited and goods account credited.

June 30. *Received Bill at Six Months from John Scott,* £200.

The bills receivable account is debited and John Scott is credited.

June 30. *Paid to account of Year's Rent of* £80, *in Cash,* £45.

The cash account is credited and rent account is debited.

June 30. *Bought Goods for Cash,* £50.

The goods account is debited and the cash account is credited.

July 1. *Bought Goods from Glen & Day,* £300.

The goods account is debited and Glen & Day's Account is credited.

July 2. *Returned Goods to Glen & Day,* £50.

The goods account is credited as the goods went out, and Glen & Day's Account is debited.

Aug. 1. *Paid Wages in Cash,* £10.

The cash account is credited and wages account is debited.

Aug 31. *Bought Goods from R. Rennie,* £200.

The goods account is debited and R. Rennie's Account is credited.

Aug. 31. *Gave R. Rennie Bill at Six Months,* £200.

R. Rennie's Account is debited and bills payable account is credited.

Nov. 9. *Paid Bill for* £300 *due to-day, by Cash,* £200, *and Cheque for* £100.

This is the bill granted to R. Rennie on 6th May, which appears at the credit of the bills payable account. As the bill has now been met, it is wiped out of the books by debiting the bills payable account with the two entries:

To cash . . £200
„ bank . . 100.

The cash account and bank account are then credited with £200 and £100 respectively.

Nov. 14. *Sold Goods to F. Mackie,* £400.

F. Mackie is debited and the goods account is credited.

Dec. 31. *Paid further to account of Rent, by Cheque,* £30.

The bank account is credited, while the rent account is debited.

Dec. 31. *Sold Goods for Cash,* £300.

The cash account is debited and the goods account credited.

Dec. 31. *Cash taken by William Marshall for his own use,* £100.

The cash having gone out, the cash account is credited, and the amount is posted to the debit of William Marshall's Capital Account, as this withdrawal of cash diminishes the balance due to him as owner of the business.

The above transactions having been recorded in the form of ledger accounts, it will be observed *that for every debit entry there is a corresponding credit entry.* This being the case, it is evident that if the ledger accounts are added up and the additions inserted in pencil, as shown by the figures in italics in the example, the total of the debits should agree with the total of the credits. In order to see that this is so, a statement of the debits and credits is prepared. This statement is called a trial balance.

The Trial Balance

An equal amount having been posted to the debit and credit sides of the ledger, to find out if the two sides actually agree, and to satisfy ourselves that no mistake has been made in posting, we prepare a trial balance to prove that the totals of the two sides of the ledger agree.

A trial balance is a list of the ledger accounts drawn up before the closing entries are made, and contains usually:

1. The ledger folio, *i.e.* the page in the ledger where the account is.
2. The name of the account.
3. Two money columns, one for the debit balances and another for the credit balances.

The trial balance is prepared *before* the closing entries are made, so as to find out when and where a mistake exists, if there is one, as early as possible. For example, in the model set of transactions given the trial balance is

taken off before the stock on hand is passed through the books, or before the profit and loss account is prepared. The reason for so doing is, that it is of no use to prepare a profit and loss account and square off the books and then find that there has been a mistake in some of the posting.

If both sides agree this only proves that there has been a debit for every credit, and that the summations are correct. It does not prove that the items have been posted to their proper accounts.

If the totals of the trial balance agree it is not an absolute proof of the accuracy of the whole of the books, for in spite of the totals of the trial balance agreeing there may be items posted to the wrong account in the ledger although they may be on the correct side and so did not affect the trial balance. Items of the same amount may also be omitted from both the debit and the credit sides of the ledger and still the trial balance would agree. The non-balancing of the trial balance is, of course, an absolute proof that the books are wrong somewhere.

In taking off a trial balance, the totals of both sides of the accounts may be taken or simply the balances on the accounts, and the trial balance is shown by both methods.

The trial balance may not agree through such errors as:

Posting the wrong amount to the ledger.
Omitting to post an item altogether.
Taking down the balance wrongly.
Omitting a balance altogether.
Posting an amount to the wrong side of the ledger.

The errors which a trial balance may not disclose may be classified into:

1. Errors of omission or commission in the original record which do not involve a difference between the debits and the credits.

2. A double or compensating error in posting, such as over-debiting one account and under-debiting another account to the same extent.

3. A sum posted to the wrong account, although on the correct side of the ledger.

The ledger accounts of William Marshall, after they are summed with the view of preparing the trial balance, together with the trial balance itself, would be as follows:—

I. LEDGER ACCOUNTS before making CLOSING ENTRIES.

F. Mackie.

Jan. 1.	To Capital		£400	0	0	Jan. 10.	By Cash	£380	0	0
Mar. 2.	,, Goods		300	0	0		,, Discount	20	0	0
Apr. 30.	,, do.		100	0	0	Mar. 3.	,, Bills Receivable	300	0	0
Nov. 14.	,, do.		400	0	0			*700*	*0*	*0*
			1,200	*0*	*0*					

John Scott.

Feb. 1.	To Goods		£150	0	0	Mar. 31.	By Bills Receivable	£230	0	0
Mar. 1.	,, do.		80	0	0	May 15.	,, Goods	10	0	0
May 11.	,, do.		100	0	0	June 30.	,, Bills Receivable	200	0	0
June 30.	,, do.		200	0	0			*440*	*0*	*0*
			530	*0*	*0*					

Bills Receivable.

Mar. 3.	To F. Mackie		£300	0	0	Mar. 3.	By Cash	£297	0	0
31.	,, John Scott		230	0	0		,, Discount	3	0	0
June 30.	,, do.		200	0	0	June 3.	,, Cash	230	0	0
			730	*0*	*0*			*530*	*0*	*0*

Glen & Day.

Jan. 2.	To Bills Payable	.	£300	0	0	Jan. 1.	By Capital	.	£200	0	0
Feb. 28.	,, Bank	.	190	0	0		,, Goods	.	100	0	0
	,, Discount	.	10	0	0	Feb. 1.	,, do.	.	200	0	0
July 2.	,, Goods	.	50	0	0	July 1.	,, do.	.	300	0	0
			550	*0*	*0*				*800*	*0*	*0*

R. Rennie.

Apr. 7.	To Cash	.	£80	0	0	Mar. 1.	By Goods	.	£200	0	0
	,, Bank	.	110	0	0	11.	,, do.	.	200	0	0
	,, Discount	.	10	0	0	Apr. 30.	,, do.	.	300	0	0
May 6.	,, Bills Payable	.	300	0	0	Aug. 31.	,, do.	.	200	0	0
Aug. 31.	,, do.	.	200	0	0				*900*	*0*	*0*
			700	*0*	*0*						

Bills Payable.

Mar. 5.	To Cash	.	£300	0	0	Jan. 2.	By Glen & Day	.	£300	0	0
Nov. 9.	,, do.	.	200	0	0	May. 6.	,, R. Rennie	.	300	0	0
	,, Bank	.	100	0	0	Aug. 31.	,, do.	.	200	0	0
			600	*0*	*0*				*800*	*0*	*0*

Goods.

Jan. 1.	To Capital	.	£800	0	0	Jan. 8.	By Cash	.	£150	0	0
	,, Glen & Day	.	100	0	0	Feb. 1.	,, John Scott	.	150	0	0
31.	,, Cash	.	60	0	0	Mar. 1.	,, do.	.	80	0	0
Feb. 1.	,, Glen & Day	.	200	0	0	2.	,, F. Mackie	.	300	0	0
Mar. 1.	,, R. Rennie	.	200	0	0	Apr. 30.	,, do.	.	100	0	0
11.	,, do.	.	200	0	0	May 9.	,, Cash	.	500	0	0
Apr. 30.	,, do.	.	300	0	0	11.	,, John Scott	.	100	0	0
May 15.	,, John Scott	.	10	0	0	June 30.	,, do.	.	200	0	0
June 30.	,, Cash	.	50	0	0	July 2.	,, Glen & Day	.	50	0	0
July 1.	,, Glen & Day	.	300	0	0	Nov. 14.	,, F. Mackie	.	400	0	0
Aug. 31.	,, R. Rennie	.	200	0	0	Dec. 31.	,, Cash	.	300	0	0
			2420	*0*	*0*				*2330*	*0*	*0*

William Marshall, Capital Account.

Jan. 1.	To Glen & Day	.	£200	0	0	Jan. 1.	By F. Mackie	.	£400	0	0
Dec. 31.	,, Cash	.	100	0	0		,, Goods	.	800	0	0
			300	*0*	*0*		,, Bank	.	100	0	0
							,, Cash	.	50	0	0
									1350	*0*	*0*

Wages.

Apr. 28.	To Cash	.	£40	0	0
Aug. 1.	,, do.	.	10	0	0
			50	*0*	*0*

Rent.

June 30.	To Cash	.	£45	0	0
Dec. 31.	,, Bank	.	30	0	0
			75	*0*	*0*

Taxes.

May 15.	To Bank	.	£10	0	0

Insurance.

May	15.	To Cash	. . .	£5	0	0				

Discount.

Jan.	10.	To F. Mackie	.	£20	0	0	Feb.	28.	By Glen & Day	. .	£10	0	0
Mar.	3.	,, Bills Receivable	.	3	0	0	Apr.	7.	,, R. Rennie	. .	10	0	0
				23	*0*	*0*					*20*	*0*	*0*

Bank.

Jan.	1.	To Capital	. . .	£100	0	0	Feb.	28.	By Glen & Day	. .	£190	0	0
	31.	,, Cash	. . .	300	0	0	Mar.	8.	,, Cash	. .	100	0	0
May	9.	,, do.	. . .	250	0	0	Apr.	7.	,, R. Rennie	. .	110	0	0
				650	*0*	*0*	May	15.	,, Taxes	. .	10	0	0
							Nov.	9.	,, Bills Payable	.	100	0	0
							Dec.	31.	,, Rent	. .	30	0	0
											540	*0*	*0*

Cash.

Jan.	1.	To Capital	. .	£50	0	0	Jan.	31.	By Goods	. .	£60	0	0
	8.	,, Goods	. .	150	0	0			,, Bank	. .	300	0	0
	10.	,, F. Mackie	. .	380	0	0	Mar.	5.	,, Bills Payable	.	300	0	0
Mar.	3.	,, Bills Receivable	.	297	0	0	Apr.	7.	,, R. Rennie	.	80	0	0
	8.	,, Bank	. .	100	0	0		28.	,, Wages	. .	40	0	0
May	9.	,, Goods	. .	500	0	0	May	9.	,, Bank	. .	250	0	0
June	3.	,, Bills Receivable	.	230	0	0		15.	,, Insurance	. .	5	0	0
Dec.	31.	,, Goods	. .	300	0	0	June	30.	,, Rent	. .	45	0	0
				2007	*0*	*0*			,, Goods	. .	50	0	0
							Aug.	1.	,, Wages	. .	10	0	0
							Nov.	9.	,, Bills Payable	.	200	0	0
							Dec.	31.	,, W. Marshall, Capital Account	.	100	0	0
											1440	*0*	*0*

TRIAL BALANCE as at 31st December.

	First Method (by means of Totals).						Second Method (by means of Balances).					
	Dr.			*Cr.*			*Dr.*			*Cr.*		
F. Mackie	£1200	0	0	£700	0	0	£500	0	0	...		
John Scott	530	0	0	440	0	0	90	0	0	...		
Bills Receivable	730	0	0	530	0	0	200	0	0	...		
Glen & Day	550	0	0	800	0	0	...			£250	0	0
R. Rennie	700	0	0	900	0	0	...			200	0	0
Bills Payable	600	0	0	800	0	0	...			200	0	0
Goods	2420	0	0	2330	0	0	90	0	0	...		
Capital	300	0	0	1350	0	0	...			1050	0	0
Wages	50	0	0	...			50	0	0	...		
Rent	75	0	0	...			75	0	0	...		
Taxes	10	0	0	...			10	0	0	...		
Insurance	5	0	0	...			5	0	0	...		
Discount	23	0	0	20	0	0	3	0	0	...		
Bank	650	0	0	540	0	0	110	0	0	...		
Cash	2007	0	0	1440	0	0	567	0	0	...		
	£9850	0	0	£9850	0	0	£1700	0	0	£1700	0	0

Closing Entries

If reference be now made to the Ledger Accounts given, the method of preparing the Profit and Loss Account will be explained. The first account requiring adjustment is the Goods Account.

Goods Account

The following is an abstract of the Goods Account as it now stands in the ledger:—

Goods Account.

Jan. 1.	To Capital	£800	0	0	Dec. 31. By Sales, etc.	£2330	0	0
Dec. 31.	,, Purchases, etc.	1620	0	0				
		2420	*0*	*0*				

On the *debit side* of the Goods Account appear (1) goods on hand at the beginning of year; (2) goods purchased during year,—a total of £2420. These goods appear at their *cost price.* On the *credit side* of the account, as shown above, appear the goods sold at their *selling price.* Of the £2420 worth of goods bought there remains still £450 worth on hand. The particulars of this £450 are got by going over the warehouse and preparing a priced schedule of all the goods in the warehouse. This process is called "stock-taking." From this it is seen that the goods which cost £1970 (£2420 less £450) have been sold for £2330, thus making a gross profit of £360 on the buying and selling of goods. The goods on hand are passed through the Goods Account by entering on the credit side "By Balance, £450"; because the stock of goods on hand must be the true balance of that account at the end of the year, no matter what the profit may have been. When this is done, the total of the credit side amounts to £2780, while the debit amounts to £2420, a difference of £360, which is the profit made on the buying and selling of goods, as explained above. This difference of £360 is entered on the debit side of the Goods Account thus, "To Profit and Loss, £360"; and from there it is posted to the credit of the Profit and Loss Account.

Both sides of the Goods Account being now equal, the account is squared off, as shown below, and the balance of £450 is carried down to the debit side of the account to start the next year with. This balance is a *debit* balance and represents an asset of goods on hand worth £450.

Abstract of Goods Account

(*After passing through the Stock on Hand at end of Year*)

Jan. 1.	To Capital	£800	0	0	Dec. 31. By Sundries	£2330	0	0
Dec. 31.	,, Sundries	1620	0	0	,, Balance	450	0	0
	,, Profit and Loss	360	0	0				
		£2780	0	0		£2780	0	0
Jan. 1.	To Balance	£450	0	0				

If, after entering the goods on hand at the end of the year to the credit of the Goods Account, the debit total exceeds the credit, then there has been a loss on the buying and selling of goods. This loss is transferred to the debit of the Profit and Loss by entering the amount on the credit of

the Goods Account under the stock on hand, as shown in the following example:—

Goods Account.

To Stock at beginning of year	£50	0	0	By Sales during year . .	£1500	0	0
,, Purchases during year .	1850	0	0	,, Stock on Hand at end of year	100	0	0
				,, Profit and Loss (being Loss)	300	0	0
	£1900	0	0		£1900	0	0
To Balance	£100	0	0				

The Goods Account always shows a debit balance after it is squared off, unless there are no goods on hand at the end of the year.

Profit and Loss Account

This is an account prepared after the trial balance has been taken off. To the credit of this account all gains are carried, and to the debit all losses.

The balance on this account, if the credit total exceeds the debit, represents "net profit"; but if the debit total exceeds the credit, the result is a loss.

As stated above when dealing with the goods account, the profit made on the buying and selling of goods, or the gross profit, is carried from the debit of the goods account to the credit of the profit and loss account.

Into the profit and loss account all the subsidiary profit and loss accounts, which contain the details of the profit and of the charges against the profit, are transferred at the close of each financial period. The method of squaring off these subsidiary accounts will now be shown in detail.

Wages Account

The wages account, as it stands in the ledger, is as follows:—

Wages Account.

April 28. To Cash . . .	£40	0	0			
Aug. 1. ,, do. . . .	10	0	0			
	50	*0*	*0*			

It will thus be seen that £50 has been paid during the year as wages. But at the close of the year it is ascertained that £10 is still due which has not been paid. The total wages for the year thus amount to £60, and the charge which should be made to the profit and loss account in respect of wages is therefore £60. This is entered on the credit side of the wages account by making the entry "By Profit and Loss, £60"; and in the profit and loss account the entry is made on the debit side "To Wages, £60."

The wages account now shows a credit balance of £10, which is entered on the debit side of the account to square it off, and the £10 is carried down as a credit balance to the next year's account.

The wages account will now appear as follows:—

Wages Account.

April 28.	To Cash	£40	0	0	Dec. 31. By Profit and Loss	£60	0	0
Aug. 1.	,, do.	10	0	0				
Dec. 31.	,, Balance	10	0	0				
		£60	0	0		£60	0	0
					Jan. 1. By Balance	£10	0	0

The foregoing method is perhaps the most direct and satisfactory one which can be adopted for recording such items as wages, rent, taxes, and other charges which have accrued during the year but are unpaid at the close of the accounts.

Rent Account

The next account requiring adjustment is the rent account. From the account, as shown, it will be observed that £75 has been paid to account of the year's rent of £80.

It is quite evident that £80 must be charged to the debit of the profit and loss account, and so an entry is made on the credit side of the rent account, "By Profit and Loss, £80." This £80 is posted to the debit of the profit and loss account by making the entry there "To Rent, £80."

The rent account is then squared off by entering on the debit side "To balance, £5," and carrying this £5 down as a credit balance to the next account.

The rent account, when squared off, will appear as follows:—

Rent Account.

June 30.	To Cash	£45	0	0	Dec. 31. By Profit and Loss	£80	0	0
Dec. 31.	,, Bank	30	0	0				
	,, Balance	5	0	0				
		£80	0	0		£80	0	0
					Jan. 1. By Balance	£5	0	0

Taxes Account

The £10 at the debit of this account is a charge against the business, and is carried to the debit of the profit and loss account by making the credit entry in the taxes account "By Profit and Loss, £10," and in the profit and loss account the debit entry "To Taxes, £10."

Insurance Account

The debit balance of £5 is carried to the profit and loss account in the same way as taxes.

Discount Account

The discount allowed to customers (£23) is in excess of the discount allowed by creditors (£20) by £3, and this being a charge against the business it is transferred to the debit of the profit and loss account by making the credit entry "By Profit and Loss, £3" in the discount account,

and making the debit entry "To Discount, £3" in the profit and loss account.

Any credit balances on the subsidiary profit and loss accounts when the trial balance is struck would be carried to the credit of the profit and loss account. Such accounts might be "interest received," "commission earned," and "fees received."

Closing the Profit and Loss Account

Having thus gathered all the profits and all the charges incurred in earning these profits into one account, called the profit and loss account, the credit side in the example given is found to exceed the debit by £202, and this represents the "net profit" for the year.

This balance may be dealt with in various ways, according to the class of business under consideration. In the example given, which is the case of an individual in business, this balance is transferred to the credit of his capital account; and this is done by entering on the debit side of the profit and loss account "To Capital, £202," and on the credit side of the capital account "By Profit and Loss, £202." The profit and loss account is then ruled off. The reason for so carrying this profit to the credit of the capital account is that this profit belongs to the owner of the business, and as it appears in some shape or other in the business, his capital is increased to that extent. It is thus seen that the owner of a business is not only a creditor of the business for the capital which he puts in, but also for all profit which the concern yields.

If a loss had been made the loss would have been debited to the capital account, as the capital would be decreased to the extent of the loss made.

Closing the other Ledger Accounts

Having completed the profit and loss account, the next step is to square off all the other ledger accounts preparatory to preparing the Balance Sheet.

As was pointed out in explaining the ledger balances *debit balances* denote that the debit side exceeds the credit side, while *credit balances* denote that the credit side exceeds the debit.

Taking the ledger accounts which have not already been squared off, the nature and method of squaring them off will now be given, together with further particulars descriptive of the accounts themselves.

F. Mackie and John Scott

The balances on these two accounts are debit balances of £500 and £90 respectively, and represent the amounts due by these two customers to William Marshall. The amounts are thus assets of the business. The balances are entered on the credit side, and carried down to the debit side of the account to start the next year with.

Bills Receivable

The balance on this account must always be a debit balance, or none at all, for reasons similar to those which make the cash account have a debit balance. Bills when received are entered on the debit side of this account, and if cash is received for them this appears on the credit side, so that the

balance, if any, must be a debit balance. The balance in the example is a debit balance of £200, which is entered on the credit side of the account. The account is now squared off, and the balance is carried down to the debit side to start the next year with.

Glen & Day and R. Rennie

On reference being made to these accounts, it will be observed that there are credit balances of £250 and £200 respectively on these accounts. These balances represent liabilities, as they consist of amounts due for goods obtained but which have not yet been paid for.

The accounts are squared off by entering "To Balance" on the debit side. The totals of both sides now agree, and each account is squared off. The balances are carried down to the credit sides of the accounts to start the next year with.

Bills Payable

The balance on this account is a credit balance of £200, and is the amount due by William Marshall in respect of a bill he has granted. It thus represents a liability. The balance on this account (if any) *must* always be a credit balance, as a person can never pay away more cash for bills than the amount of bills he has actually granted.

In order to square off this account, an entry is made on the debit side "To Balance, £200." The account is then ruled off, and the balance of £200 carried down to the credit side of the account to start the next year with.

William Marshall, Capital Account

The credit side, before the profit and loss entry was made, amounted to £1350, and with the net profit amounts to £1552. The debit side amounts to £300, so that, on this account, there is a *credit balance* of £1252.

The balance is entered on the debit side of the account, "To Balance, £1252." Both sides are then squared off by putting in the totals of £1552, and the balance is carried down to the new account on the opposite or credit side. When this balance is carried down it appears on the credit side, and is accordingly a credit balance.

A credit balance on the capital account, as in this example, represents the excess of assets over liabilities, and is the capital sunk in the business.

Should there be a debit balance on this account, then the liabilities exceed the assets by that amount, and it is the amount of the insolvency of the concern.

Cash Account

The balance on this account must always be a debit balance or none at all, as a person can never pay away more money than he receives.

The balance is entered on the credit side of the old account, and carried down on the debit side of the new account, and represents the cash on hand to start the next year with.

Bank Account

The balance on this account may either be a debit or credit balance according as there is money in bank or the account is overdrawn. In the

example given, the balance is a debit balance which, in order to square off the account, is entered on the credit side and carried down to the debit side of the new account. This balance represents the "cash in bank."

The Balance Sheet

Having thus squared off all the accounts and carried down the balances, the next step is to prepare a statement showing the assets and liabilities of the concern as at 31st December, as shown by the books. This statement is called a Balance Sheet. A Balance Sheet may be defined as a statement prepared from books kept by double entry showing the assets and liabilities of a concern at a particular moment of time.

If reference is made to the Balance Sheet given, it will be observed that all debit balances are assets, while all credit balances are liabilities. This always holds good immediately after the profit and loss account has been prepared and completed.

It must be observed that the Balance Sheet is simply a statement, and is no part of the book-keeping. It is prepared to show at a glance the position of the concern at a particular date.

It will be observed that the capital is entered in the Balance Sheet as a liability. The reason is that the owner of the business is looked upon as an outsider, and the liability represents the amount due to him by the business.

The Balance Sheet being correct, which is so far proved by both the sides agreeing, the ledger is ready to be started for the next year.

The ledger accounts, as completed, are now given, together with the Balance Sheet.

2. Completed Ledger Accounts

F. Mackie.

Jan.	1.	To Capital		£400	0	0	Jan. 10.	By Cash		£380	0	0
Mar.	2.	,, Goods		300	0	0		,, Discount		20	0	0
Apr.	30.	,, do.		100	0	0	Mar. 3.	,, Bills Receivable		300	0	0
Nov.	14.	,, do.		400	0	0	Dec. 31.	,, Balance		500	0	0
				£1200	0	0				£1200	0	0
Jan.	1.	To Balance		£500	0	0						

John Scott.

Feb.	1.	To Goods		£150	0	0	Mar. 31.	By Bills Receivable		£230	0	0
Mar.	1.	,, do.		80	0	0	May 15.	,, Goods		10	0	0
May	11.	,, do.		100	0	0	June 30.	,, Bills Receivable		200	0	0
June	30.	,, do.		200	0	0	Dec. 31.	,, Balance		90	0	0
				£530	0	0				£530	0	0
Jan.	1.	To Balance		£90	0	0						

Bills Receivable

Mar.	3.	To F. Mackie		£300	0	0	Mar. 3.	By Cash		£297	0	0
	31.	,, John Scott		230	0	0		,, Discount		3	0	0
June	30.	,, do.		200	0	0	June 3.	,, Cash		230	0	0
							Dec. 31.	,, Balance		200	0	0
				£730	0	0				£730	0	0
Jan.	1.	To Balance		£200	0	0						

Glen & Day.

Jan.	2.	To Bills Payable	£300	0	0	Jan.	1.	By Capital	£200	0	0
Feb.	28.	,, Bank	190	0	0			,, Goods	100	0	0
		,, Discount	10	0	0	Feb.	1.	,, do.	200	0	0
July	2.	,, Goods	50	0	0	July	1.	,, do.	300	0	0
Dec.	31.	,, Balance	250	0	0						
			£800	0	0				£800	0	0
						Jan.	1.	By Balance	£250	0	0

R. Rennie.

Apr.	7.	To Cash	£80	0	0	Mar.	1.	By Goods	£200	0	0
		,, Bank	110	0	0		11.	,, do.	200	0	0
		,, Discount	10	0	0	Apr.	30.	,, do.	300	0	0
May	6.	,, Bills Payable	300	0	0	Aug.	31.	,, do.	200	0	0
Aug.	31.	,, do.	200	0	0						
Dec.	31.	,, Balance	200	0	0						
			£900	0	0				£900	0	0
						Jan.	1.	By Balance	£200	0	0

Bills Payable.

Mar.	5.	To Cash	£300	0	0	Jan.	2.	By Glen & Day	£300	0	0
Nov.	9.	,, do.	200	0	0	May	6.	,, R. Rennie	300	0	0
		,, Bank	100	0	0	Aug.	31.	,, do.	200	0	0
Dec.	31.	,, Balance	200	0	0						
			£800	0	0				£800	0	0
						Jan.	1.	By Balance	£200	0	0

Goods.

Jan.	1.	To Capital	£800	0	0	Jan.	8.	By Cash	£150	0	0
		,, Glen & Day	100	0	0	Feb.	1.	,, John Scott	150	0	0
	31.	,, Cash	60	0	0	Mar.	1.	,, do.	80	0	0
Feb.	1.	,, Glen & Day	200	0	0		2.	,, F. Mackie	300	0	0
Mar.	1.	,, R. Rennie	200	0	0	Apr.	30.	,, do.	100	0	0
	11.	,, do.	200	0	0	May	9.	,, Cash	500	0	0
Apr.	30.	,, do.	300	0	0		11.	,, John Scott	100	0	0
May	15.	,, John Scott	10	0	0	June	30.	,, do.	200	0	0
June	30.	,, Cash	50	0	0	July	2.	,, Glen & Day	50	0	0
July	1.	,, Glen & Day	300	0	0	Nov.	14.	,, F. Mackie	400	0	0
Aug.	31.	,, R. Rennie	200	0	0	Dec.	31.	,, Cash	300	0	0
Dec.	31.	,, Profit & Loss	360	0	0			,, Balance	450	0	0
			£2780	0	0				£2780	0	0
Jan.	1.	To Balance	£450	0	0						

William Marshall, Capital Account.

Jan.	1.	To Glen & Day	£200	0	0	Jan.	1.	By F. Mackie	£400	0	0
Dec.	31.	,, Cash	100	0	0			,, Goods	800	0	0
		,, Balance	1252	0	0			,, Bank	100	0	0
								,, Cash	50	0	0
						Dec.	31.	,, Profit & Loss	202	0	0
			£1552	0	0				£1552	0	0
						Jan.	1.	By Balance	£1252	0	0

Wages.

Apr. 28.	To Cash	£40	0	0	Dec 31.	By Profit & Loss	£60	0	0
Aug. 1.	,, do.	10	0	0					
Dec. 31.	,, Balance	10	0	0					
		£60	0	0			£60	0	0
					Jan. 1.	By Balance	£10	0	0

Rent.

June 30.	To Cash	£45	0	0	Dec. 31.	By Profit & Loss	£80	0	0
Dec. 31.	,, Bank	30	0	0					
	,, Balance	5	0	0					
		£80	0	0			£80	0	0
					Jan. 1.	By Balance	£5	0	0

Taxes.

May 15.	To Bank	£10	0	0	Dec. 31.	By Profit & Loss	£10	0	0

Insurance.

May 15.	To Cash	£5	0	0	Dec. 31.	By Profit & Loss	£5	0	0

Discount.

Jan. 10.	To F. Mackie	£20	0	0	Feb. 28.	By Glen & Day	£10	0	0
Mar. 3.	,, Bills Receivable	3	0	0	Apr. 7.	,, R. Rennie	10	0	0
					Dec. 31.	,, Profit & Loss	3	0	0
		£23	0	0			£23	0	0

Bank.

Jan. 1.	To Capital	£100	0	0	Feb. 28.	By Glen & Day	£190	0	0
31.	,, Cash	300	0	0	Mar. 8.	,, Cash	100	0	0
May 9.	,, do.	250	0	0	Apr. 7.	,, R. Rennie	110	0	0
					May 15.	,, Taxes	10	0	0
					Nov. 9.	,, Bills Payable	100	0	0
					Dec. 31.	,, Rent	30	0	0
						,, Balance	110	0	
		£650	0	0			£650	0	0
Jan. 1.	To Balance	£110	0	0					

Cash.

Jan. 1.	To Capital	£50	0	0	Jan. 31.	By Goods	£60	0	0
8.	,, Goods	150	0	0		,, Bank	300	0	0
10.	,, F. Mackie	380	0	0	Mar. 5.	,, Bills Payable	300	0	0
Mar. 3.	,, Bills Receivable	297	0	0	Apr. 7.	,, R. Rennie	80	0	0
8.	,, Bank	100	0	0	28.	,, Wages	40	0	0
May 9.	,, Goods	500	0	0	May 9.	,, Bank	250	0	0
June 3.	,, Bills Receivable	230	0	0	15.	,, Insurance	5	0	0
Dec. 31.	,, Goods	300	0	0	June 30.	,, Rent	45	0	0
						,, Goods	50	0	0
					Aug. 1.	,, Wages	10	0	0
					Nov. 9.	,, Bills Payable	200	0	0
					Dec. 31.	,, W. Marshall, Capital Account	100	0	0
						,, Balance	567	0	0
		£2007	0	0			£2007	0	0
Jan. 1.	To Balance	£567	0	0					

Profit and Loss.

Dec. 31.	To Wages	£60	0	0	Dec. 31. By Goods	£360	0	0
	,, Rent	80	0	0				
	,, Taxes	10	0	0				
	,, Insurance	5	0	0				
	,, Discount	3	0	0				
	,, Capital	202	0	0				
		£360	0	0		£360	0	0

BALANCE SHEET as at 31st December.

ASSETS.				LIABILITIES.			
Due by F. Mackie	£500	0	0	Due to Glen & Day	£250	0	0
Due by John Scott	90	0	0	Due to R. Rennie	200	0	0
Bills Receivable	200	0	0	Bills Payable	200	0	0
Goods on hand	450	0	0	Wages Outstanding	10	0	0
Cash in Bank	110	0	0	Rent Outstanding	5	0	0
Cash on hand	567	0	0	Capital	1252	0	0
	£1917	0	0		£1917	0	0

It has now been shown by means of ledger accounts how the business transactions of William Marshall may be properly and sufficiently recorded, and how this record may be used in determining the exact effect of these transactions, both individually and in the aggregate. The net profit which his business has earned has been shown, and, in addition, we know exactly how that profit has arisen. It is thus apparent that the essential book in book-keeping is the ledger, and that all the results which book-keeping is capable of affording may be obtained by the use of the ledger alone. In practice, however, it would be found almost impossible to keep accounts in the way that has been illustrated by means of a ledger only; but it is important to remember that the whole theory of book-keeping is contained in the ledger, and that any other books which it may be found advisable to use are simply branches or parts of the ledger system, and can only be properly understood and used with intelligence when they are looked upon as such.

THE CONNECTION BETWEEN THE TRIAL BALANCE, PROFIT AND LOSS ACCOUNT, AND BALANCE SHEET.

In order to show the connection between the Trial Balance, the Profit and Loss account, and the Balance Sheet, and to demonstrate the close relation which they bear to one another, there is given a statement showing how the Profit and Loss account and Balance Sheet in connection with the transactions of William Marshall are derived from the Trial Balance and the particulars taken at stock-taking. The form of Trial Balance used is that in which the balance of each account is given and not the totals of the two sides. This is to show more clearly how these balances are disposed of, and it will be observed that the first six items appear at once in the column headed "Balance Sheet." The goods account shows a debit balance of £90, which is deducted from the stock on hand of £450, leaving £360, which is entered on the income side of the Profit and Loss account. The £450 of stock on hand is entered as an asset in the Balance Sheet. It will be observed that in the case of the wages and the rent accounts the debit

balances, as shown in the Trial Balance, are added to the charges outstanding, and the sum entered on the expenditure side of the Profit and Loss account, the items outstanding being also carried into the Balance Sheet as liabilities. The other balances are carried, without modification, either into the Profit and Loss account or into the Balance Sheet, according as they are charges or assets. These statements are largely used in teaching book-keeping in America, and will well repay a careful consideration. After preparing the Profit and Loss account and Balance Sheet in the ordinary way from a set of transactions, the preparation of such statements is most useful with the view of obtaining a proper grasp of the close relationship which exists between the Trial Balance, as modified by the stock-taking, and the Profit and Loss account and the Balance Sheet (see p. 439).

Practical Book-keeping

The method of recording and working up the results of a business by means of a ledger shows fully the theory of book-keeping, but the method must be modified in practice so as to give the same results with much less trouble. In devising a set of books for any business concern there is a number of points which should be carefully kept in mind. It should be such a system of book-keeping as will not involve the employment of too many clerks nor the procuring of too expensive books. The great secret of achieving economy in the book-keeping of an establishment is to utilise the original entries to the fullest extent. No scroll books should ever be tolerated, but the entries should be at once written into the proper book of record as the transactions take place, and each book of record should be so arranged as to be utilised in preparing the Profit and Loss account and Balance Sheet. Another criterion of a good system of book-keeping, and one which often effects great saving of time, is to have the books so arranged that it is possible, in the event of any errors getting into the books, to trace them readily. Where it is possible to localise errors, the irksome labour of going over the whole of the books is obviated, and much time is saved. In a good system of book-keeping the books should be so arranged and subdivided that the clerks of the establishment can have access to them as they require. The system of book-keeping is not satisfactory where one clerk cannot get on with his work because another clerk is using the book he requires. Under a well-arranged system of book-keeping it is very easy to avoid this. To sum up, that system of book-keeping is the best in which the fullest effect is given to the following:—

1. The utilising of the original entries.
2. The localising of errors.
3. The accessibility of the books to the staff of the establishment.

II. Business Transactions recorded as they might be in Actual Practice

Having treated the transactions of William Marshall in a purely theoretical manner by means of ledger accounts, it now remains to illustrate how these transactions might be treated in a practical way. Any one who has carefully followed the working out of the transactions in the form of ledger accounts should have no difficulty in understanding the principles upon which any set of books is kept. It is evident that in a large business the transactions connected with cash might become so extensive

The Trial Balance, Profit and Loss Account, and Balance Sheet in one Connected Statement.

	Trial Balance as at 31st Dec.		Stock-taking, 31st Dec.		Profit and Loss Account for Year.		Balance Sheet as at 31st Dec.	
	Dr.	*Cr.*	Charges Outstanding.	Stock.	Expenditure.	Income.	Assets.	Liabilities.
F. Mackie	£500 0 0						£500 0 0	
John Scott	90 0 0						90 0 0	
Bills Receivable	200 0 0						200 0 0	
Glen & Day		£250 0 0						£250 0 0
R. Rennie		200 0 0						200 0 0
Bills Payable		200 0 0						200 0 0
Goods	90 0 0			£450 0 0		£360 0 0	450 0 0	
Capital		1050 0 0			£202 0 0			1252 0 0
Wages	50 0 0		£10 0 0		60 0 0			10 0 0
Rent	75 0 0		5 0 0		80 0 0			5 0 0
Taxes	10 0 0				10 0 0			
Insurance	5 0 0				5 0 0			
Discount	3 0 0				3 0 0			
Bank	110 0 0						110 0 0	
Cash	567 0 0						567 0 0	
	£1700 0 0	£1700 0 0	£15 0 0	£450 0 0	£360 0 0	£360 0 0	£1917 0 0	£1917 0 0

as to necessitate a clerk being employed to devote his whole time to attending to the cash. In such a case it would be of advantage, instead of having a cash account in the ledger, to keep it in a separate book which the cashier could have always in front of him. Similarly, separate books might be kept for goods purchased and for goods sold. The point which must be kept fully in mind in considering such books is that they really form part of the ledger system. Thus, the cash book takes the place of the cash account. The book in which the purchases are recorded is really the debit side of the goods account, and the book in which the sales are recorded is really the credit side of the goods account in the ledger. The books necessary to record the transactions of William Marshall might be the following:—

1. The Cash Book, for cash transactions.
2. The Invoice Book, for goods bought.
3. The Day Book, for goods sold.
4. The Bills Receivable Book.
5. The Bills Payable Book.
6. The Journal.
7. The Ledger.

The first six of these books are called books of original entry or record, because all entries are first made in them before they appear in the ledger to which they are posted from the original record. The uses of the following books which are in general use are also explained:—

8. The Private Ledger.
9. The Returns Inwards Book.
10. The Returns Outwards Book.
11. The Petty Cash Book.

1. Cash Book

The cash book is the book in which the original entries of the receipts and payments of cash are entered. Its simplest form is that of a ledger account, but to effect various savings in labour it is sometimes very elaborate. Thus, separate columns may be employed to record discount allowed to customers and discount allowed by purchasers, and the whole of the receipts and payments may be analysed.

Cash in this connection includes not only coin and bank notes but also cheques received from outsiders, post office orders, postal orders, and bank drafts. Bills receivable should not be treated as cash, although sometimes they are so treated, but should be separately recorded.

The cash book should always be entered up immediately the cash transactions take place, and there are comparatively few, if any, businesses in which a scroll cash book is permissible. The object of sometimes keeping a scroll cash book is to have the principal cash book very neatly written up at the book-keeper's leisure, but the objections against the use of scroll cash books are very many. One main objection is that, where a scroll cash book is kept, the first thing a clever counsel might ask, if the principal cash book was produced as evidence in court, would be whether the entry had been made in the cash book at the time the transaction took place; and, if he were answered in the negative and told that a scroll cash book were kept, the principal cash book would be of no use as evidence. If the scroll cash book could not be produced the case might be lost. Then, again, in transcribing from the scroll cash book mistakes may be made. Very often in cases of fraud the use of a scroll cash book has enabled the fraud to be

accomplished and hidden much more easily than it would have been had no scroll cash book been used.

In those forms of cash book in which the names of the accounts are entered on separate pages for the debit and credit entries either the receipts or the payments are more numerous, but as it is desirable that the dates should correspond, the blank portion of the page is simply left or a transverse line drawn across it and the entries continued on new pages when one page is filled up.

The cash on hand should be counted daily to see that it agrees with the balance, as shown by the cash book. This is a rule which should always be observed, at all events where the daily cash transactions are of any extent. It is a good plan to keep a book showing the daily counting of the cash on hand, with the particulars of how it is made up.

The cash book, although a separate book, really forms part of the ledger, and is in its simplest form the same as a cash account. In preparing a trial balance, therefore, the cash balance must be entered in the debit column as one of the balances.

The cash book may, in most cases, be with considerable advantage still further modified so as to include a bank column. By this means a separate bank account is rendered unnecessary in the ledger. In some businesses a very good rule is made that all payments must be made by cheque. The bank columns in the cash book do away with the necessity for a separate account in the ledger.

The cash book which is given has three money columns on each side headed "discount," "bank," and "cash." Instead of three separate ledger accounts being kept for discount, bank, and cash, the details of these three accounts are practically kept side by side in the form of cash book submitted, and the transactions affecting each are recorded in a somewhat similar way to what they would be if separate ledger accounts were kept.

The discount column on the debtor side is for the purpose of inserting opposite the name of the customer who has paid his account the amount of discount allowed. The discount column on the credit side is for discount allowed by creditors at settlement. The bank column on the debtor side is for the purpose of containing the sums paid into the bank, and the bank column on the credit side is for all amounts paid by the bank or drawn out of the bank, including any interest, commission, or charges made by the bank. It will be observed that the bank column on the debit side begins with the balance of cash in bank at the beginning of the year, and that the cash in bank at the close of the year is entered in the credit column, just as it would be in a bank account in the ledger. The bank columns contain all the entries as they appear in the bank pass book, and there is thus no necessity for keeping a bank account in the ledger.

When money is paid into the bank out of the cash in hand it is entered on the credit side of the cash book, in the cash column, as paid to bank, and on the debit side of the cash book, in the bank column, as cash received by the bank.

When money is drawn out of bank by means of a cheque to be used in the office as cash, the amount is entered on the debit side in the cash column as "cash received" from the bank, and also on the credit side in the bank column as paid by the bank.

Where it is considered undesirable to show the balance in the bank in the cash book, a ledger account may be opened for the bank and the totals of the bank columns posted to it at the end of each month or other period.

The cash column on the debtor side is for cash actually received, and the cash column on the credit side is for the cash actually paid away. The balance of cash on hand or in bank at any time can thus be readily ascertained by taking the difference between the respective columns.

All the items on the debit side of the cash book should be posted to the credit of some account in the ledger, and all the items on the credit side of the cash book should be posted to the debit of some account in the ledger, except purely cash transactions with the bank and the cash and bank balances. The total of the discount column on the debit side may be posted to the debit side of an account in the ledger, headed "discount to customers," either weekly, monthly, or quarterly. The summation of the discount column on the credit side may similarly be posted to an account in the ledger, headed "discount allowed by creditors," either weekly, monthly, or quarterly. In the example given, however, it will be observed that the difference between the debit and credit discount columns is entered in the less column and is posted to the Discount Account at the end of the year. The balances of cash in hand and cash in bank are carried down to begin the next year in the same way as they would be in the case of ledger accounts.

2. The Invoice Book

The invoice book is for the purpose of containing the details of all goods purchased, whether for cash or on credit. It thus practically takes the place of the debit side of the Goods Account in the ledger, and to form a ledger account it is only necessary to post the total of the invoice book, either weekly or monthly, as may be thought desirable, to the debit side of the Goods Account. The individual items of the invoice book are posted to the credit of the accounts of the persons from whom the goods were purchased, with the exception of the cash items which have already appeared on the credit side of the cash book. In posting the totals of the invoice book to the debit of the Goods Account it is often advisable to keep a record of the transfer in the journal, as is done in the example submitted.

The invoice book should contain columns for the following particulars where these are all required:—

Date of the purchase.

Name and address of the creditor.

Description of the goods purchased, including weight, number, and quality.

The price of the goods.

In the business in connection with which an example of an invoice book is given only one class of goods is supposed to be purchased, but in businesses where two or more different classes of goods are dealt in it is often advisable to have the invoice book ruled with columns for each class of goods. This is done with the view of the owner of the business being able to ascertain the gross profit made in each department of the business. It is often very desirable to know this, as, while one part may be remunerative, another part of the business may be worked at a loss. Separate accounts for each class of goods would in such a case be kept in the ledger.

The following is an example of an invoice book which might be used by a merchant who was desirous of seeing what profit he was making on each class of goods dealt in:—

Invoice Book

		Tea.	Coffee.	Sugar.	Other Goods.	Total.

The invoice book is also known as the purchases day book, the purchases book, the bought day book, the bought book, and the credit journal.

3. The Day Book

The day book is for the purpose of containing the details of the goods sold, whether for cash or on credit. It thus really forms the credit side of the Goods Account in the ledger. The individual items in this book are posted to the debit of the customers' accounts in the ledger, with the exception of any purely cash items which have already appeared on the debit side of the cash book. The total of the day book is posted at stated intervals to the credit of the Goods Account, and it is usually desirable to keep a record of these transfers in the journal. In the example given the total is posted at the end of the year to the credit of the Goods Account by means of a journal entry.

The day book should contain columns for the following particulars where these are required:—

Date of the sale.

Name and address of the customer.

Description of the goods sold as to weight, number, and quality.

The price of the goods.

The method of delivery, and whether carriage free.

Any other terms of sale.

Where it is desirable to ascertain the profit on the separate departments of a business, the day book as well as the invoice book requires to be ruled in the columnar method already shown.

4. The Bills Receivable Book

In this book the particulars of all bills received are entered, and the specimen submitted is referred to for its form. The bills, when received, are entered in this book and from thence posted to the credit of the persons from whom they were received. The total of the bills received during the month or other period is posted to the debit of the Bills Receivable Account in the ledger, and this may be done by a journal entry as in the example submitted.

When the cash is received for a bill, it is debited in the cash book, and the amount is posted to the credit of the Bills Receivable ledger account.

A marking is also made in the bills receivable book showing what has become of the bill.

It will thus be seen that the Bills Receivable Account at any time, when it is fully posted up, shows the amount of bills on hand, and if particulars are required as to who are due the bills, these will be found in the bills receivable book, because bills not yet matured will stand not noted as "met," "discounted," or otherwise disposed of.

5. The Bills Payable Book

In this book the particulars of all bills granted or on which the owner of the business has become liable are entered, and the specimen submitted is referred to for its form. The bills, when granted or accepted, are entered in this book and from thence posted to the debit of the party to whom they were given. The total of the bills granted during the month or other period is posted to the credit of the Bills Payable Account in the ledger.

When the cash is paid to meet a bill it is entered in the cash book on the credit side in the cash column (if paid in cash) or in the bank column (if paid by cheque), and from there it is posted to the debit of the Bills Payable Account. A marking is at the same time made in the bills payable book showing that the bill has been paid.

The Bills Payable Account, when fully posted up, shows at any time the balance due on bills payable, and the particulars of this balance may be obtained from the bills payable book.

6. The Journal

In modern book-keeping the journal is only used as a posting medium for those entries which cannot be conveniently posted through any other book of original entry. Its form, as well as the method of making the entry, is somewhat technical. As will be seen if reference is made to the form of journal given, it is ruled with a column for the date of making the entry, a place for the names of the accounts which have to be debited or credited, a column for the folio of the ledger to which the amounts are to be posted, and two money columns, the left-hand column being for amounts which have to go to the debit side in the ledger and the right-hand column for amounts which have to go to the credit side in the ledger. The operation of making a journal entry is called journalising. The debit entry is always made first, and the name of the account or accounts to be debited is followed by the contraction "Dr." at the end of the line. The account or accounts to be credited are prefixed by the word "To." After the names of the accounts are given there follows, where necessary, an explanation of the entry. This explanation is called the "narration" or the "narrative," and should contain such details and explanation as to make the reason for the entry quite plain without referring to any other source of information. A space is usually left blank between each journal entry with a line drawn through it so as to keep each entry quite distinct and separate. The two money columns should be added up, as is done in the example, in order to show that the debits equal the credits.

In most businesses there are some transactions which cannot be conveniently passed through the cash book, the invoice book, or the day book, and for all such transactions it is desirable to use the journal. The journal is solely for the purpose of keeping a record of the debiting and crediting of certain items in the ledger, and its use is now practically confined to:

1. The opening entries.

2. Entries which cannot be conveniently carried through the books of original record, *e.g.* correcting entries.

3. The closing entries.

In the journal submitted it will be observed that the opening entries are all included, although the bank and cash items might have been posted direct from the cash book. The items throughout the year refer to the totals of the invoice book, day book, and bill book. The other entries relate to the closing of the books.

Such an entry as a transfer of an amount from one account to another, or a correcting entry, would go through the journal, and from there be posted to the ledger accounts concerned.

7. The Ledger

In the example given the ledger accounts have been recorded in one ledger, but in actual business the ledger is generally divided into:

1. The customers' ledger or debtors' ledger, for customers' accounts.
2. The purchases ledger or creditors' ledger, for accounts with creditors.
3. The general ledger for all other accounts.

In large businesses a further subdivision of the first two ledgers may take place, as, for example, the customers' ledger may be divided into town and country and the creditors' ledger into English and Scotch. They may also be divided alphabetically, and sometimes it is found convenient to have the invoice books and the day books divided to correspond.

8. The Private Ledger

In many businesses it is desirable that the profits earned and the capital sunk in the business should not be shown in the ordinary books, and a private ledger is kept. No goods account, capital account, or profit and loss account appear in the outside office books, but an account is kept in the general ledger headed "Private Ledger Account," which, in the example given, would appear as follows:—

Private Ledger Account

Jan. 1.	To Glen & Day	.	.	£200	0	0	Jan. 1.	By F. Mackie	.	£400	0	0
Dec. 31.	,, Goods (purchases)	.		1620	0	0		,, Bank	.	100	0	0
	,, Wages	.	.	50	0	0		,, Cash	.	50	0	0
	,, Rent	.	.	75	0	0	Dec. 31.	,, Goods (sales)	.	2330	0	0
	,, Taxes	.	.	10	0	0						
	,, Insurance	.		5	0	0						
	,, Discount	.		3	0	0						
	,, Balance	.	.	917	0	0						
				£2880	0	0				£2880	0	0

The uses of the private ledger and the accounts contained therein are fully explained later on, where a set of transactions is fully worked out, and the principle involved may be applied to any set of accounts, with modifications where necessary.

9. The Returns Inwards Book

Frequently when goods are sold and delivered they are returned by the customer for some reason. When the return is accepted by the seller he

must record the return in a returns inwards book, and from that book credit the customer and see that the return is deducted from the sales. Sometimes goods returned are debited to the goods account, but this should not be done if it is desired to have a correct statement of the sales and purchases. Returns often consist of packing-cases, boxes, casks, bottles, etc. The form of the returns inwards book is the same as the sales day book. A credit note should be sent to each customer who has returned goods. Very often a credit note is printed in red ink to distinguish it from an ordinary invoice, and should always be headed "credit note." Any allowance to the customer for the goods not being up to sample, or for their being damaged, should be entered through the returns inwards book.

In the example given the returns are deducted direct from the day book total, and where the returns are not numerous this is a convenient method of treating them and does not necessitate the use of a separate book for them.

10. The Returns Outwards Book

The returns outwards book is for the original entries of goods returned by the trader, and for allowances made to him in respect of goods which he has purchased. The book should be ruled the same as the invoice book, and the entries are made in a similar manner. From this book the personal account is debited, and the total is posted to the credit of the purchases account in the ledger. Returns outwards may also be deducted from the total of the invoice book, as in the example given.

11. The Petty Cash Book

In large businesses very often small payments of cash require to be made for petty expenses. These items are very numerous, and are often made by different persons for the different departments of the business. It is therefore often necessary to have a special book or special books for recording these incidental expenses as they occur. A petty cash book, or a set of petty cash books, is used for this purpose. The most satisfactory system is what is known as the imprest system. Under this system, if the incidental expenses amount to say £10, a cheque for this amount is drawn by the cashier, who pays it to the petty cashier, who keeps it in a separate box and accounts for it at the end of the month. If a further sum is required before the end of the month another cheque is drawn in the same way. The petty cashier records the daily expenditure of his cash either in a simple form of cash book or in a columnar cash book in which the petty expenditure is analysed out under its different headings. If the petty cashier has spent during the month £7 : 7 : 5, the cashier gives him at the end of the month a cheque for this amount, and either debits the amount to the incidental expenses account or to the individual accounts into which the petty cash transactions have been analysed. The petty cashier has now at the beginning of the next month £10 in hand, and so the system goes on from month to month. In some businesses it is found more convenient to give the petty cashier a cheque as required, and this is debited to a petty cash account in the ledger. At the end of each month, when the incidental expenses have been analysed, the petty cash account is credited and the various accounts debited with the amounts. The petty cash account in the ledger thus shows the balance of cash which the petty cashier has in his hands. The following is the example of a petty cash book :—

Petty Cash Book

Cash received.	Date.	Particulars.	Cash paid.	Charges.	Postages.	Carriages.	Goods.	Travelling Expenses.	Advertising.
£ s. d.			£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
10 0 0	Jan. 1	To Cash							
	2	By Stamps	10 0		10 0				
	4	,, Caledonian Railway	1 5 5			1 5 5			
	7	,, Office cleaning	5 6	5 6					
	8	,, Car fares	8					8	
	9	,, Advertising account	5 0						5 0
	10	,, J. Smith, goods	1 0				1 0		
	14	,, Office cleaning	5 6	5 6					
		,, Stamps	10 0		10 0				
	15	,, North British Railway	9 10			9 10			
	18	,, Goods	1 6				1 6		
		,, Cab fare	2 6					2 6	
	21	,, Office cleaning	5 6	5 6					
		,, Repairing cash box	1 6	1 6					
	22	,, Advertising account	9 0						9 0
	23	,, Stamps	1 0 0		1 0 0				
	26	,, Window cleaning	5 0	5 0					
	28	,, Office cleaning	5 6	5 6					
		,, Goods	4 0				4 0		
	29	,, Stamps	1 0 0		1 0 0				
7 7 5	31	To Cash							
		By Balance	10 0 0						
£17 7 5			£17 7 5	1 8 6	3 0 0	1 15 3	6 6	3 2	14 0
£10 0 0	Feb. 1	To Balance.							

Abstract.

To Cash	£17 7 5	By Charges	£1 8 6
		,, Postages	3 0 0
		,, Carriages	1 15 3
		,, Goods	6 6
		,, Travelling Expenses	3 2
		,, Advertising	14 0
			£7 7 5
		,, Balance	10 0 0
	£17 7 5		£17 7 5

The books of William Marshall based on the transactions given on page 418 are now submitted:—

Cash Book

Dr. *Cr.*

Date.	Particulars.	Folio.	Discount (allowed).	Bank (paid in).	Cash (received).	Date.	Particulars.	Folio.	Discount (secured).	Bank (cheques issued).	Cash (paid).
Jan. 1.	To Capital			£100 0 0	£50 0 0	Jan. 31.	By Goods				£60 0 0
8.	,, Goods				150 0 0		,, Bank				300 0 0
10.	,, F. Mackie		£20 0 0		380 0 0	Feb. 28.	,, Glen & Day		£10 0 0	£190 0 0	
31.	,, Cash			300 0 0		Mar. 5.	,, Bills Payable				300 0 0
Mar. 3.	,, Bills Receivable		3 0 0		297 0 0	8.	,, Cash			100 0 0	
8.	,, Bank				100 0 0	Apr. 7.	,, R. Rennie		10 0 0	110 0 0	80 0 0
May 9.	,, Goods				500 0 0	28.	,, Wages				40 0 0
	,, Cash			250 0 0		May 9.	,, Bank				250 0 0
June 3.	,, Bills Receivable				230 0 0	15.	,, Insurance				5 0 0
Dec. 31.	,, Goods				300 0 0		,, Taxes			10 0 0	
						June 30.	,, Rent				45 0 0
							,, Goods				50 0 0
						Aug. 1.	,, Wages				10 0 0
						Nov. 9.	,, Bills Payable			100 0 0	200 0 0
						Dec. 31.	,, Rent			30 0 0	
							,, W. Marshall—Capital Account				100 0 0
							,, Discount		3 0 0		
							,, Balances			110 0 0	567 0 0
			£23 0 0	£650 0 0	£2007 0 0				£23 0 0	£650 0 0	£2007 0 0
Jan. 1.	To Balances			£110 0 0	£567 0 0						

Invoice Book

Jan. 1.	To Glen & Day		£100	0 0
31.	,, Cash		60	0 0
Feb. 1.	,, Glen & Day		200	0 0
Mar. 1.	,, R. Rennie		200	0 0
11.	,, do.		200	0 0
Apr. 30.	,, do.		300	0 0
June 30.	,, Cash		50	0 0
July 1.	,, Glen & Day		300	0 0
Aug. 31.	,, R. Rennie		200	0 0
			£1610	0 0
	Less—Returns Outwards			
July 2.	By Glen & Day		50	0 0
		Goods *Dr.*	£1560	0 0

Day Book

Jan. 8.	By Cash		£150	0 0
Feb. 1.	,, John Scott		150	0 0
Mar. 1.	,, do.		80	0 0
2.	,, F. Mackie		300	0 0
Apr. 30.	,, do.		100	0 0
May 9.	,, Cash		500	0 0
11.	,, John Scott		100	0 0
June 30.	,, do.		200	0 0
Nov. 14.	,, F. Mackie		400	0 0
Dec. 31.	,, Cash		300	0 0
			£2280	0 0
	Less—Returns Inwards			
May 15.	To John Scott		10	0 0
		Goods *Cr.*	£2270	0 0

Bills Receivable Book

When Received.	No.	From whom Received.	By whom Drawn.	On whom Drawn.	To whom Payable.	Where Payable.	Amount.	Date.	Term.	When Due. Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.	Ledger Folio.	Cash Book Folio.	Remarks.
Mar. 3.	1	F. Mackie	Self	F. Mackie	Self	Edinburgh	£300 0 0	Mar. 3.	3 mos.						6							116	90	Discounted B. of S.
31.	2	J. Scott	J. Scott	R. Smith	J. Scott or Order	do.	230 0 0	31.	2 mos.						3							180	129	Met
June 30.	3	do.	Self	J. Scott	Self	do.	200 0 0	June 30.	6 mos.	2												180		
						Bills Receivable, Dr.	£730 0 0																	

Bills Payable Book

When Granted.	No.	To whom Given.	To whom Payable.	Where Payable.	Amount.	Date.	Term.	When Due. Jan.	Feb.	Mar.	Apr.	May.	June.	July.	Aug.	Sept.	Oct.	Nov.	Dec.	Ledger Folio.	Cash Book Folio.	Remarks.
Jan. 2.	1	Glen & Day	Glen & Day	Edinburgh	£300 0 0	Jan. 2.	2 mos.			5										200	93	Paid
May 6.	2	R. Rennie	R. Rennie	do.	300 0 0	May 6.	6 mos.											9		450	161	Paid
Aug. 31.	3	do.	do.	do.	200 0 0	Aug. 31.	6 mos.			3										450		
				Bills Payable, Cr.	£800 0 0																	

NOTE.—When bill falls due in the next year the particulars under the column "When Due" may be noted as shown above by two lines thus =, or the date may be inserted in red ink.

JOURNAL

Jan. 1.	F. Mackie		*Dr.*	£400	0	0		
	Goods		,,	800	0	0		
	Bank		,,	100	0	0		
	Cash		,,	50	0	0		
	To W. Marshall, Capital Account						£1350	0 0
	for assets at this date							
	W. Marshall, Capital Account		*Dr.*	200	0	0		
	To Glen & Day						200	0 0
	for liability at this date							
				£1550	0	0	£1550	0 0
Dec. 31.	Goods		*Dr.*	£1560	0	0		
	To Sundries						£1560	0 0
	for total of Invoice Book							
	Sundries		*Dr.*	2270	0	0		
	To Goods						2270	0 0
	for total of Day Book							
	Bills Receivable		*Dr.*	730	0	0		
	To Sundries						730	0 0
	for total of Bills Receivable Book							
	Sundries		*Dr.*	800	0	0		
	To Bills Payable						800	0 0
	for total of Bills Payable Book							
	Goods (New Account)		*Dr.*	450	0	0		
	To Goods (Old Account)						450	0 0
	for goods on hand at this date							
	Wages (Old Account)		*Dr.*	10	0	0		
	To Wages (New Account)						10	0 0
	for wages outstanding at this date							
	Rent (Old Account)		*Dr.*	5	0	0		
	To Rent (New Account)						5	0 0
	for rent outstanding at this date							
	Goods		*Dr.*	360	0	0		
	To Profit and Loss						360	0 0
	for gross profit on goods							
	Profit and Loss		*Dr.*	360	0	0		
	To Wages						60	0 0
	,, Rent						80	0 0
	,, Taxes						10	0 0
	,, Insurance						5	0 0
	,, Discount						3	0 0
	,, Capital						202	0 0
				£6545	0	0	£6545	0 0

LEDGER

F. Mackie.

Jan. 1.	To Capital		£400	0	0	Jan. 10.	By Cash		£380	0 0
Mar. 2.	,, Goods		300	0	0		,, Discount		20	0 0
Apr. 30.	,, do.		100	0	0	Mar. 3.	,, Bills Receivable		300	0 0
Nov. 14.	,, do.		400	0	0	Dec. 31.	,, Balance		500	0 0
			£1200	0	0				£1200	0 0
Jan. 1.	To Balance		£500	0	0					

John Scott.

Feb. 1.	To Goods		£150	0	0	Mar. 31. By Bills Receivable	£230	0	0
Mar. 1.	,, do.		80	0	0	May 15. ,, Goods	10	0	0
May 11.	,, do.		100	0	0	June 30. ,, Bills Receivable	200	0	0
June 30.	,, do.		200	0	0	Dec. 31. ,, Balance	90	0	0
			£530	0	0		£530	0	0
Jan. 1.	To Balance		£90	0	0				

Bills Receivable.

Dec. 31.	To Sundries	£730	0	0	Mar. 3.	By Cash	£297	0	0
						,, Discount	3	0	0
					June 3.	,, Cash	230	0	0
					Dec. 31.	,, Balance	200	0	0
		£730	0	0			£730	0	0
Jan. 1.	To Balance	£200	0	0					

Glen & Day.

Jan. 2.	To Bills Payable	£300	0	0	Jan. 1.	By Capital	£200	0	0
Feb. 28.	,, Bank	190	0	0		,, Goods	100	0	0
	,, Discount	10	0	0	Feb. 1.	,, do.	200	0	0
July 2.	,, Returns	50	0	0	July 1.	,, do.	300	0	0
Dec. 31.	,, Balance	250	0	0					
		£800	0	0			£800	0	0
					Jan. 1.	By Balance	£250	0	0

R. Rennie.

Apr. 7.	To Cash	£80	0	0	Mar. 1.	By Goods	£200	0	0
	,, Bank	110	0	0	11.	,, do.	200	0	0
	,, Discount	10	0	0	Apr. 30.	,, do.	300	0	0
May 6.	,, Bills Payable	300	0	0	Aug. 31.	,, do.	200	0	0
Aug. 31.	,, do.	200	0	0					
Dec. 31.	,, Balance	200	0	0					
		£900	0	0			£900	0	0
					Jan. 1.	By Balance	£200	0	0

Bills Payable.

Mar. 5.	To Cash	£300	0	0	Dec. 31.	By Sundries	£800	0	0
Nov. 9	,, do.	200	0	0					
	,, Bank	100	0	0					
Dec. 31	,, Balance	200	0	0					
		£800	0	0			£800	0	0
					Jan. 1.	By Balance	£200	0	0

Goods.

Jan. 1.	To Capital	£800	0	0	Dec. 31.	By Sundries (sales)	£2270	0	0
Dec. 31.	,, Sundries (purchases)	1560	0	0		,, Balance	450	0	0
	,, Profit & Loss	360	0	0					
		£2720	0	0			£2720	0	0
Jan. 1.	To Balance	£450	0	0					

William Marshall, Capital Account.

Jan. 1.	To Glen & Day		£200	0	0	Jan. 1.	By Sundries		£1350	0	0
Dec. 31.	,, Cash		100	0	0	Dec. 31.	,, Profit & Loss		202	0	0
	,, Balance		1252	0	0						
			£1552	0	0				£1552	0	0
						Jan. 1.	By Balance		£1252	0	0

Wages.

Apr. 28.	To Cash		£40	0	0	Dec. 31.	By Profit & Loss		£60	0	0
Aug. 1.	,, do.		10	0	0						
Dec. 31.	,, Balance		10	0	0						
			£60	0	0				£60	0	0
						Jan. 1.	By Balance		£10	0	0

Rent.

June 30.	To Cash		£45	0	0	Dec. 31.	By Profit & Loss		£80	0	0
Dec. 31.	,, Bank		30	0	0						
	,, Balance		5	0	0						
			£80	0	0				£80	0	0
						Jan. 1.	By Balance		£5	0	0

Taxes.

May 15.	To Bank		£10	0	0	Dec. 31.	By Profit & Loss		£10	0	0

Insurance.

May 15.	To Cash		£5	0	0	Dec. 31.	By Profit & Loss		£5	0	0

Discount.

Dec. 31.	To Cash		£3	0	0	Dec. 31.	By Profit & Loss		£3	0	0

Profit and Loss.

Dec. 31.	To Wages		£60	0	0	Dec. 31.	By Goods		£360	0	0
	,, Rent		80	0	0						
	,, Taxes		10	0	0						
	,, Insurance		5	0	0						
	,, Discount		3	0	0						
	,, Capital		202	0	0						
			£360	0	0				£360	0	0

BALANCE SHEET as at 31st December.

Assets.				*Liabilities.*			
Due by F. Mackie	£500	0	0	Due to Glen & Day	£250	0	0
Due by John Scott	90	0	0	Due to R. Rennie	200	0	0
Bills Receivable	200	0	0	Bills Payable	200	0	0
Goods on hand	450	0	0	Wages Outstanding	10	0	0
Cash in Bank	110	0	0	Rent Outstanding	5	0	0
Cash on hand	567	0	0	Capital	1252	0	0
	£1917	0	0		£1917	0	0

III. PRACTICAL BOOK-KEEPING FURTHER DEVELOPED

The method of recording the transactions of William Marshall may be still further developed and improved. A method of keeping these transactions is now submitted which has several advantages over those already shown. The advantages of the method will be explained when treating of the various books. The books required under this system are:—

1. Columnar cash book.
2. Invoice book.
3. Day book.
4. Bills receivable book.
5. Bills payable book.
6. Journal.
7. Ledgers:—
   (1) Customers' ledger or debtors' ledger, for customers' accounts.
   (2) Purchases ledger or creditors' ledger, for accounts with creditors or with those from whom goods are purchased.
   (3) The general ledger, for all other accounts.

The method of keeping a private ledger is also indicated.

THE CASH BOOK

It will be observed that the form of cash book now given is that of a "columnar cash book," with the transactions following each other as they take place, and not, as in the previous cash book, with the debit transactions following in order of date on the debit side, and the credit transactions following in order on the credit side. The advantage of having only one "particulars" column is that no blank spaces appear in the cash book, as is the case with the former cash book, when the number of debit transactions for one day complete a page, but the credit transactions do not occupy so much as a page. In this case the credit page would be left partly blank, and the next day's transactions, both debit and credit, started on a new page. No such blanks can occur with a cash book such as is here given.

The use of the "discount," "bank," and "cash" columns is exactly the same as in the previous cash book, and no difficulty should be experienced in comprehending their use if a few transactions are worked out.

The other columns are analytical columns for the purpose of classifying the receipts and payments into what they consist of, as shown in the example.

The posting of the items in this cash book, so far as they relate to customers and creditors, is the same as before, and the other items may also be treated as they were before, but in most businesses it is sufficient if the

monthly totals only are dealt with. The totals of the "wages," "rent, etc.," and "charges" columns may be posted monthly or weekly to the debit of these accounts. The advantage of having columns for these items is that every individual transaction does not require to be posted to the ledger account, the totals only being posted. It is quite clear that this is a great advantage where, as in some businesses, cash is being paid out frequently, for "charges" for example. If the old method were adopted each item would be posted to the debit of the "charges account," but by this method the weekly or monthly total only need be posted.

Any payments which cannot be analysed out into any of the other columns appear in the column headed "other payments," and each item in this column, which is sometimes headed "general ledger," should be posted to its appropriate account.

The chief advantage of the system, which is having columns for "sales" and "purchases," will be explained when dealing with the customers' and creditors' ledgers.

The total of the debit discount column in this case is posted to the debit of the "Discount Account," and the total of the credit discount column to the credit of the "Discount Account."

In the example given the columns are totalled at the end of the year, but in practice they would be summed weekly or monthly.

Invoice Book

This book is used exactly in the manner already explained, and, as the entries are exactly the same as in the former set, it is not repeated. One point, however, requires to be noted. In the former set it would be observed that goods returned to creditors were deducted off the invoice book, and the net amount posted to the debit of the goods account. In working out this set separate accounts have been kept for purchases and sales, and a returns outwards book is supposed to be kept from which the creditors are debited with goods returned to them, and a journal entry is made at the end of the month crediting the purchases account with the total. The entry will be seen if reference is made to the purchases account in the general ledger.

The Day Book

This is the same as before, and is not repeated. Returns from customers are supposed to be kept in a separate book,—the returns inwards book,—and the total is debited to the sales account.

The Journal

The opening and closing entries are almost the same as in the former set, and are not repeated.

Certain alterations, however, are necessary in the wording of the entries. Thus, for example, in posting the total of the day book the journal entry would be:

Abstract of Customers' Account .	*Dr.*	£2280 0 0	
To Sales			£2280 0 0

The Ledgers

(1) *Customers' Ledger.*—If reference is made to the customers' ledger, it will be observed that there is an account headed General Ledger account.

This account is kept in order that the customers' ledger may be balanced at any time without reference being made to any other ledger. All items debited to the customers in their individual accounts appear in abstract form in this General Ledger account, but on the credit side. Similarly, all items credited to customers appear in abstract form on the debit side of this account.

It will be observed that a columnar cash book, such as that given, is necessary in order to get the total cash received on account of sales. The total sales appear in the day book.

The balance on this General Ledger account in the customers' ledger should agree with the balances as taken from the customers' ledger. If they do not agree then there must be a mistake either in the posting or in the summations. By this means the customers' ledger may be balanced at any time independently of the other ledgers, and a trial balance of the customers' ledger taken off.

The trial balance at 31st December would be in this case:—

CUSTOMERS' LEDGER

Trial Balance as at 31st December.

	Dr.	Cr.
F. Mackie	£500 0 0	
John Scott	90 0 0	
Bills Receivable	200 0 0	
General Ledger Account		£790 0 0
	£790 0 0	£790 0 0

(2) *Creditors' Ledger.*—This ledger also is made self-balancing by keeping a General Ledger account, into which items relating to the creditors' accounts are posted in abstract, but on the opposite side to that on which they appear in the individual creditors' accounts.

The trial balance of this ledger at 31st December would be as follows:—

CREDITORS' LEDGER

Trial Balance as at 31st December.

	Dr.	Cr.
Glen & Day		£250 0 0
R. Rennie		200 0 0
Bills Payable		200 0 0
General Ledger Account	£650 0 0	
	£650 0 0	£650 0 0

(3) *General Ledger.*—The first two accounts in this ledger, viz., Customers' Ledger account and Purchases Ledger account, correspond with the General Ledger accounts in the customers' and creditors' ledgers respectively. The method of writing up these two accounts will readily be seen. For example: the Customers' Ledger account is debited with the balance due by customers at the beginning of the year, and the sales to customers during the year as shown by the day book totals. The cash received for sales is entered on the credit side of the account, together with the discount allowed to customers, the amounts being obtained from the

columnar cash book. Any returns from customers also appear on the credit side of this account.

The corresponding debits and credits for these amounts in this account appear in the other accounts, viz. sales, cash, and discount.

By keeping such accounts in the general ledger the owner of the business can tell, by referring to these accounts, the total sum due by customers, and how much is due to creditors, without actually referring to the customers' and creditors' ledgers. This is a great advantage, as by this means, if the customers' balances are increasing beyond the ordinary limit, an explanation will be demanded, and thus, to a certain extent, fraud, which otherwise might be undetected, is more liable to be found out.

If a cash abstract were kept in the general ledger, that ledger would also be self-balancing without it being necessary to refer to any other book. The following would be the cash abstract if it were inserted in the ledger, but in most cases it is omitted, as the cash on hand and in bank can be obtained at once from the cash book :—

CASH ABSTRACT for year to 31st December.

Jan. 1.	To Balances—			Dec. 31.	By Purchases		£1090	0 0
	Cash	£50	0 0		,, Wages		50	0 0
	Bank	100	0 0		,, Rent, Taxes, and Insurance		90	0 0
		£150	0 0		,, Capital		100	0 0
Dec. 31.	To Sales	1857	0 0		,, Balances—			
					Cash	£567 0 0		
					Bank	110 0 0		
							677	0 0
		£2007	0 0				£2007	0 0

Such an abstract, prepared monthly and inserted in the general ledger, would enable a trial balance of the general ledger to be taken off, and if particulars of the stock on hand could be ascertained from stock accounts, a profit and loss account and balance sheet could be prepared at any time.

The balance of the general ledger at 31st December, supposing this cash abstract to be inserted, using the word "balance" to signify the position of the books after the closing entries have been made, would be as follows :—

Balance of General Ledger at 31st December.

Customers	£790 0 0	
Creditors		£650 0 0
Goods	450 0 0	
Capital		1252 0 0
Wages		10 0 0
Rent, etc.		5 0 0
Cash	110 0 0	
Bank	567 0 0	
	£1917 0 0	£1917 0 0

Having thus far dealt with the differences between this method and the one immediately preceding, and the advantages of this third method, the cash book and ledger accounts are now given together with the balance sheet.

Dr. CASH BOOK *Cr.*

Discount.	Sales.	Folio.	Bank.	Cash.	Date.	Particulars.	Cash.	Bank.	Folio.	Purchases.	Discount.	Wages.	Rent, Rates, and Insurance.	Charges.	Other Payments.
£ s. d.	£ s. d.		£ s. d.	£ s. d.			£ s. d.	£ s. d.		£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
			100 0 0	50 0 0	Jan. 1	To Capital.									
	150 0 0			150 0 0	,, 8	,, Goods.									
20 0 0	380 0 0			380 0 0	,, 10	,, F. Mackie.									
					,, 31	By Goods . . .	60 0 0			60 0 0					
			300 0 0			,, Bank, sum paid in	300 0 0								
					Feb 28	,, Glen & Day . .		190 0 0		190 0 0	10 0 0				
3 0 0	297 0 0			297 0 0	Mar. 3	To Bills Receivable.									
					,, 5	By Bills Payable .	300 0 0			300 0 0					
				100 0 0	,, 8	To Cheque Cashed .		100 0 0							
					April 7	By R. Rennie . .	80 0 0	110 0 0		190 0 0	10 0 0				
					,, 28	,, Wages . . .	40 0 0					40 0 0			
	500 0 0			500 0 0	May 9	To Goods.									
			250 0 0			By Bank, sum paid in	250 0 0								
					,, 15	,, Insurance . .	5 0 0						5 0 0		
						,, Taxes . . .		10 0 0					10 0 0		
	230 0 0			230 0 0	June 8	To Bills Receivable.									
					,, 30	By Rent . . .	45 0 0						45 0 0		
						,, Goods . . .	50 0 0			50 0 0					
					Aug. 1	,, Wages . . .	10 0 0					10 0 0			
					Nov. 9	,, Bills Payable .	200 0 0	100 0 0		300 0 0					
					Dec. 31	,, Rent . . .		30 0 0					30 0 0		
	300 0 0			300 0 0		To Goods.									
						By W. Marshall, Capital Account . .	100 0 0								100 0 0
						,, Balances . .	567 0 0	110 0 0							
23 0 0	1857 0 0		650 0 0	2007 0 0			2007 0 0	650 0 0		1090 0 0	20 0 0	50 0 0	90 0 0		100 0 0
			110 0 0	567 0 0	Jan. 1	To Balances.									

CUSTOMERS' LEDGER

F. Mackie.

Jan. 1.	To Capital	£400 0 0		Jan. 10.	By Cash	£380 0 0	
Mar. 2.	,, Goods	300 0 0			,, Discount	20 0 0	
Apr. 30.	,, do.	100 0 0		Mar. 3.	,, Bills Receivable	300 0 0	
Nov. 14.	,, do.	400 0 0		Dec. 31.	,, Balance	500 0 0	
		£1200 0 0				£1200 0 0	
Jan. 1.	To Balance	£500 0 0					

John Scott.

Feb. 1.	To Goods	£150 0 0		Mar. 31.	By Bills Receivable	£230 0 0	
Mar. 1.	,, do.	80 0 0		May 15.	,, Returns	10 0 0	
May 11.	,, do.	100 0 0		June 30.	,, Bills Receivable	200 0 0	
June 30.	,, do.	200 0 0		Dec. 31.	,, Balance	90 0 0	
		£530 0 0				£530 0 0	
Jan. 1.	To Balance	£90 0 0					

Bills Receivable.

Dec. 31.	To Sundries	£730 0 0		Mar. 3.	By Cash	£297 0 0	
					,, Discount	3 0 0	
				June 3.	,, Cash	230 0 0	
				Dec. 31.	,, Balance	200 0 0	
		£730 0 0				£730 0 0	
Jan. 1.	To Balance	£200 0 0					

General Ledger Account.

Dec. 31.	To Cash	£1857 0 0		Jan. 1.	By Balance	£400 0 0	
	,, Discount	23 0 0		Dec. 31.	,, Sales	2280 0 0	
	,, Returns	10 0 0					
	,, Balance	790 0 0					
		£2680 0 0				£2680 0 0	
				Jan. 1.	By Balance	£790 0 0	

PURCHASES LEDGER

Glen & Day.

Jan. 2.	To Bills Payable	£300 0 0		Jan. 1.	By Capital	£200 0 0	
Feb. 28.	,, Bank	190 0 0			,, Goods	100 0 0	
	,, Discount	10 0 0		Feb. 1.	,, do.	200 0 0	
July 2.	,, Returns	50 0 0		July 1.	,, do.	300 0 0	
Dec. 31.	,, Balance	250 0 0					
		£800 0 0				£800 0 0	
				Jan. 1.	By Balance	£250 0 0	

R. Rennie.

Apr. 7.	To Cash	£80 0 0		Mar. 1.	By Goods	£200 0 0	
	,, Bank	110 0 0		11.	,, do.	200 0 0	
	,, Discount	10 0 0		Apr. 30.	,, do.	300 0 0	
May 6.	,, Bills Payable	300 0 0		Aug. 31.	,, do.	200 0 0	
Aug. 31.	,, do.	200 0 0					
Dec. 31.	,, Balance	200 0 0					
		£900 0 0				£900 0 0	
				Jan. 1.	By Balance	£200 0 0	

Bills Payable.

Mar.	5.	To Cash		£300	0	0	Dec. 31.	By Sundries	£800	0	0
Nov.	9.	,, do.		200	0	0					
		,, Bank		100	0	0					
Dec.	31.	,, Balance		200	0	0					
				£800	0	0			£800	0	0
							Jan.	1. By Balance	£200	0	0

General Ledger Account.

Jan.	1.	To Balance	£200	0	0	Dec.	31.	By Cash	£1090	0	0
Dec.	31.	,, Purchases	1610	0	0			,, Discount	20	0	0
								,, Returns	50	0	0
								,, Balance	650	0	0
			£1810	0	0				£1810	0	0
Jan.	1.	To Balance	£650	0	0						

GENERAL LEDGER

Customers' Ledger Account.

Jan.	1.	To Balance	£400	0	0	Dec.	31.	By Cash	£1857	0	0
Dec.	31.	,, Sales	2280	0	0			,, Discount	23	0	0
								,, Returns	10	0	0
								,, Balance	790	0	0
			£2680	0	0				£2680	0	0
Jan.	1.	To Balance	£790	0	0						

Purchases Ledger Account.

Dec.	31.	To Cash	£1090	0	0	Jan.	1.	By Balance	£200	0	0
		,, Discount	20	0	0	Dec.	31.	,, Purchases	1610	0	0
		,, Returns	50	0	0						
		,, Balance	650	0	0						
			£1810	0	0				£1810	0	0
						Jan.	1.	By Balance	£650	0	0

Sales.

Dec.	31.	To Returns	£10	0	0	Dec.	31.	By Sales per Day Book	£2280	0	0
		,, Goods	2270	0	0						
			£2280	0	0				£2280	0	0

Purchases.

Dec.	31.	To Purchases per Invoice Book	£1610	0	0	Dec.	31.	By Returns	£50	0	0
								,, Goods	1560	0	0
			£1610	0	0				£1610	0	0

Goods.

Jan.	1.	To Capital	£800	0	0	Dec.	31.	By Sales	£2270	0	0
Dec.	31.	,, Purchases	1560	0	0			,, Balance	450	0	0
		,, Profit & Loss	360	0	0						
			£2720	0	0				£2720	0	0
Jan.	1.	To Balance	£450	0	0						

William Marshall, Capital Account.

Jan. 1.	To Glen & Day	£200	0	0	Jan. 1.	By Sundries	£1350	0	0
Dec. 31.	,, Cash	100	0	0	Dec. 31.	,, Profit & Loss	202	0	0
	,, Balance	1252	0	0					
		£1552	0	0			£1552	0	0
					Jan. 1.	By Balance	£1252	0	0

Wages.

Dec. 31.	To Cash	£50	0	0	Dec. 31.	By Profit & Loss	£60	0	0
	,, Balance	10	0	0					
		£60	0	0			£60	0	0
					Jan. 1.	By Balance	£10	0	0

Rent, Rates, and Insurance.

Dec. 31.	To Cash	£90	0	0	Dec. 31.	By Profit & Loss	£95	0	0
	,, Balance	5	0	0					
		£95	0	0			£95	0	0
					Jan. 1.	By Balance	£5	0	0

Discount.

Dec. 31.	To Cash	£23	0	0	Dec. 31.	By Cash	£20	0	0
						,, Profit & Loss	3	0	0
		£23	0	0			£23	0	0

Profit & Loss.

Dec. 31.	To Wages	£60	0	0	Dec. 31.	By Goods	£360	0	0
	,, Rent, Rates, and Insurance	95	0	0					
	,, Discount	3	0	0					
	,, Capital	202	0	0					
		£360	0	0			£360	0	0

BALANCE SHEET as at 31st December.

Assets.				*Liabilities.*			
DUE BY CUSTOMERS—				DUE TO CREDITORS—			
On Open Account		£590	0 0	On Open Account		£450	0 0
On Bills Receivable		200	0 0	On Bills Payable		200	0 0
		£790	0 0			£650	0 0
GOODS ON HAND		450	0 0	SUNDRY CHARGES OUTSTANDING—			
CASH—				Wages	£10 0 0		
In Bank	£110 0 0			Rent	5 0 0		
On hand	567 0 0					15	0 0
		677	0 0	CAPITAL		1252	0 0
		£1917	0 0			£1917	0 0

If what precedes has been followed out with any care, there need be no difficulty in grasping the principles involved in any special branch of book-keeping; but in order that a few special transactions may be shown, the following subjects will now be taken up :—

1. The Private Ledger and its use.
2. Consignment Accounts.
3. Joint Accounts.
4. Charges Outstanding.
5. Single Entry Book-keeping and other forms of incomplete accounts.

The Private Ledger

Reference has already been made to the private ledger, and the method of its use has been indicated in treating of William Marshall's transactions; but, in order that the principles of book-keeping may be further illustrated and elucidated, a different set of transactions is now given, so that, while the use of the private ledger is being explained, a further opportunity may be afforded of grasping the method of treating the transactions in the other books.

As the name suggests, the use of this ledger is for the purpose of keeping certain of the particulars of a business more private than is usual. In a business it is often undesirable that the outside office staff should be allowed to know the capital sunk in the business, the profit that is being earned, or the loss that is being incurred. While it is not desirable to show these items in the outside office books, it is still essential to have the books kept in a thorough manner, and, in order to attain this object, a simple modification of the system already explained is adopted. The books kept in the general office will be referred to as the "outside office" books, and the books kept by the principal or principals, as the "inner office" books. The "outer office" books in an ordinary business consist of a cash book, invoice book, day book, customers' ledger, credit ledger, general ledger, journal, and subsidiary books, such as returns books, etc. The working of these books has already been explained. The "inner office" books may consist merely of a private ledger and a private journal, or simply a private ledger. It is the working of these private books with the "outer office" books that falls to be dealt with, and the only way of understanding their use is to take a model set of transactions of a business of which the owner does not desire that his capital or profit should be shown in the "outer office" books. Suppose that John Ross starts business on 1st January, and that his state of affairs at that date is as follows:—

Assets.		*Liabilities.*	
Due by Customers	£600 0 0	Due to Creditors	£200 0 0
Goods	400 0 0	Capital	1150 0 0
Furniture and Fittings	50 0 0		
Cash in Bank	200 0 0		
Cash on hand	100 0 0		
	£1350 0 0		£1350 0 0

John Ross is desirous that his capital should not be shown in the "outside office" books. In ordinary circumstances his capital account would be credited with his total assets and debited with his total liabilities, while the individual accounts would be debited and credited respectively with the individual assets and liabilities. It is quite evident, therefore, that such a procedure cannot be adopted here, as no capital account has to appear in the "outside office" books. In the general ledger there should be

opened an account headed "Private Ledger account," which takes the place of the capital account to a limited extent. To the credit of this account should be posted all the assets which are to appear in the "outside office" books, and the individual accounts are debited. Similarly, the liabilities, so far as it is thought desirable to show them in the "outside office" books, are debited to this account and credited to the individual accounts.

On reference being made to the state of affairs as at 1st January, it will be considered necessary that the assets "cash on hand," "cash in bank," "amount due by customers," and the liability "amounts due to creditors," should be recorded in the "outside office" books, as during the year these accounts will be operated upon. Thus, to start John Ross's books the "outside office" books would appear as follows, so far as the opening entries are concerned:—

CASH BOOK

		Dis-count.	Bank.	Cash.			Dis-count.	Bank.	Cash.
Jan. 1	To Private Ledger Account.		£200 0 0	£100 0 0					

CUSTOMERS' LEDGER

R. Simpson.

Jan. 1.	To Private Ledger Account	£400	0	0			

J. Paterson.

Jan. 1.	To Private Ledger Account	£200	0	0			

CREDITORS' LEDGER

T. Robson.

					Jan. 1.	By Private Ledger Account	£50 0 0

W. Smith.

					Jan. 1.	By Private Ledger Account	£150 0 0

GENERAL LEDGER

Private Ledger Account.

Jan. 1.	To Creditors' Ledger	£200	0	0	Jan. 1.	By Customers' Ledger	£600	0	0
,,	Balance	700	0	0	,,	Cash	100	0	0
					,,	Bank	200	0	0
		£900	0	0			£900	0	0
					Jan. 1.	By Balance	£700	0	0

In order to keep a record of the above transactions a journal may be opened, when these transactions recorded in the journal would be as follows:—

JOURNAL

Jan. 1.	Cash		*Dr.*	£100	0	0		
	Bank		,,	200	0	0		
	To Private Ledger Account						£300	0 0
	for cash on hand and cash in bank on this date							
	R. Simpson		*Dr.*	400	0	0		
	J. Paterson		,,	200	0	0		
	To Private Ledger Account						600	0 0
	for amounts due by customers at this date							
	Private Ledger Account		*Dr.*	200	0	0		
	To T. Robson						50	0 0
	,, W. Smith						150	0 0
	for liabilities to outside creditors at this date							

So far every item concerning the "outside office" books has been posted, and it is quite evident that the transactions for the year could now be proceeded with, as the "outside office" books are complete, so far as the opening entries are concerned; but, in order to prove this, a trial balance may be struck, which would be as follows:—

TRIAL BALANCE OF "OUTSIDE OFFICE" BOOKS as at 1st January.

	Dr.			Cr.		
Cash	£100	0	0			
Bank	200	0	0			
Customers' Ledger	600	0	0			
Creditors' Ledger				£200	0	0
Private Ledger Account				700	0	0
	£900	0	0	£900	0	0

It will be observed that only those assets and liabilities have been passed through the "outside office" books which are absolutely necessary, while such items as "goods on hand" and "furniture and fittings" have not been passed through the "outside office" books at all. Now, as John Ross requires to keep a record of these items somewhere, and also a record of his capital at 1st January, he keeps a private set of books; and it may be mentioned at the outset that the best way to understand the working of this private set of books is to look upon the "outside office" as a debtor or creditor, as the case may be, of the principal, who keeps the set of private books.

The set of books which the principal keeps, or, it may be, his confidential clerk, consists of a private journal and a private ledger. The principal, who in this case is John Ross, looks upon the "outside office" as a debtor of his for the assets that appear in the "outside office" books, and as his creditor for the liabilities appearing in the "outside office" books. To record these facts in his private books he therefore debits the "outside office" with the assets appearing in its books and credits his "capital account" in the private ledger. Similarly, he credits the "outside office" with the liabilities appearing in its books and debits his capital account in the private ledger. The account for the "outside office" appears in the private ledger as the General Ledger account. The "goods on hand" and "furniture and fittings" have still to be dealt with, and as these only appear in the private books he simply debits the goods account and the furniture and fittings account and credits his capital account with these

items. After these facts have been recorded in the private journal and private ledger, these books would appear as follows:—

PRIVATE JOURNAL

Jan. 1.	General Ledger Account	*Dr.*				£900	0	0		
	To Capital								£900	0 0
	for the following assets appearing in the "Outside Office" books, viz.:—									
	Customers . . .		£600	0	0					
	Cash		100	0	0					
	Bank		200	0	0					
			£900	0	0					
	Capital	*Dr.*				200	0	0		
	To General Ledger Account . . .								200	0 0
	for amount due to creditors appearing in the "Outside Office" books									
	Goods	*Dr.*				400	0	0		
	Furniture and Fittings	,,				50	0	0		
	To Capital								450	0 0
						£1550	0	0	£1550	0 0

PRIVATE LEDGER

Capital Account.

Jan. 1.	To General Ledger Account . .	£200	0	0	Jan. 1.	By General Ledger Account . .	£900	0 0
,,	Balance . .	1150	0	0	,,	Goods . . .	400	0 0
					,,	Furniture and Fittings . .	50	0 0
		£1350	0	0			£1350	0 0
					Jan. 1.	By Balance . . .	£1150	0 0

Goods Account.

Jan. 1.	To Capital . . .	£400	0	0				

Furniture and Fittings.

Jan. 1.	To Capital . . .	£50	0	0				

General Ledger Account.

Jan. 1.	To Capital for Sundries per Journal . .	£900	0	0	Jan. 1.	By Capital for Amount due Creditors .	£200	0 0
					,,	Balance . . .	700	0 0
		£900	0	0			£900	0 0
Jan. 1.	To Balance . . .	£700	0	0				

The books have thus been opened so that the capital is not shown in the "outside office" books, and at the same time John Ross has in his private ledger a complete record of how he stands at 1st January; his capital account having a credit balance of £1150, which is the figure given in the state of affairs, and the other accounts in his private ledger showing how this capital is made up. It will be observed that the general ledger account in the private ledger has a debit balance of £700, which corresponds with the credit balance of £700 in the private ledger account in the general ledger; and if John Ross desires to know what this asset consists of he simply refers to the trial balance of the "outside office" books as at 1st January, or to the private journal.

Conversely, if the book-keeper of the "outside office" books desires to know what the credit balance of £700 on the private ledger account in the general ledger consists of he simply refers to the trial balance or journal in the same way.

It will thus be seen that the figure appearing in the private ledger account in the general ledger conveys to the book-keeper nothing except the difference between the assets and liabilities appearing in his books. It so happens that, in this example, the balance at 1st January is a credit balance in the private ledger account; but it is easily seen that in other cases where the liabilities in the "outside office" books exceed the assets the balance in the private ledger account would be a debit one. Thus, as regards the capital sunk in the concern, the "outside office" can know very little.

Having thus opened the books so as to secure secrecy in regard to the amount of the capital, it is also necessary that the profit earned during the year should be kept from the "outside office."

Let the following be taken as the transactions during the year, and observe how these are recorded during the year and finally dealt with at the close of the year:—

Transactions during Year.

Jan.	4.	Cash paid into Bank	£50	0	0
	5.	Goods purchased from T. Robson	100	0	0
	8.	Goods sold to J. Paterson	200	0	0
	31.	Goods sold for cash	30	0	0
Feb.	19.	Goods bought for cash	20	0	0
	28.	John Ross took goods for his own use	10	0	0
Mar.	2.	Received from R. Simpson in settlement of his account	380	0	0
		Discount allowed him	20	0	0
	31.	Paid W. Smith in settlement of his account	140	0	0
		Discount allowed by him	10	0	0
		Drew cheque for wages	50	0	0
June	1.	Bought goods from W. Smith	160	0	0
	3.	Sold goods to R. Simpson	70	0	0
		Received cheque from J. Paterson and paid same into Bank	400	0	0
	6.	Paid T. Robson by cheque	150	0	0
	9.	Cash drawn out of business by John Ross	100	0	0
	12.	Paid for taxes	20	0	0
July	12.	Sold goods to J. Paterson	140	0	0
		Sold goods for cash	10	0	0
	19.	Paid W. Smith by cheque in settlement of his account	145	0	0
		Discount allowed by him	15	0	0
Aug.	1.	Paid wages in cash	5	0	0
		Received from J. Paterson	140	0	0
Sept.	2.	Bought goods from T. Robson	90	0	0
		Do. W. Smith	30	0	0
		Sold goods to R. Simpson	50	0	0
		Do. J. Paterson	60	0	0
Nov.	11.	Paid into Bank	100	0	0
		Paid for year's rent by cheque	120	0	0
		Paid insurance premium on stock	1	0	0
Dec.	31.	Paid sundry charges	4	0	0

The above transactions are passed through the "outside office" books, and these books when squared off at the end of the year would appear as follows:—

Cash Book

		Discount.	Bank.	Cash.			Discount.	Bank.	Cash.
Jan. 1.	To Private Ledger Account		£200 0 0	£100 0 0	Jan. 4.	By Bank			£50 0 0
4.	,, Cash		50 0 0		Feb. 19.	,, Goods			20 0 0
31.	,, Goods			30 0 0	Mar. 31.	,, W. Smith	£10 0 0		140 0 0
Mar. 2.	,, R. Simpson	£20 0 0		380 0 0		,, Wages		£50 0 0	
June 3.	,, J. Paterson		400 0 0		June 6.	,, T. Robson		150 0 0	
July 12.	,, Goods			10 0 0	9.	,, Private Ledger Account (cash drawn out by John Ross)			100 0 0
Aug. 1.	,, J. Paterson			140 0 0	12.	,, Taxes			20 0 0
Nov. 11.	,, Cash		100 0 0		July 19.	,, W. Smith	15 0 0	145 0 0	
					Aug. 1.	,, Wages			5 0 0
					Nov. 11.	,, Bank			100 0 0
						,, Rent		120 0 0	
						,, Insurance			1 0 0
					Dec. 31.	,, Sundry charges			4 0 0
						,, Balances		285 0 0	220 0 0
		£20 0 0	£750 0 0	£660 0 0			£25 0 0	£750 0 0	£660 0 0
Jan. 1.	To Balances		£285 0 0	£220 0 0					

Day Book

Jan. 8.	By J. Paterson	£200 0 0
31.	,, Cash	30 0 0
Feb. 28.	,, Private Ledger Account (Goods taken by J. Ross)	10 0 0
June 3.	,, R. Simpson	70 0 0
July 12.	,, J. Paterson	140 0 0
	,, Cash	10 0 0
Sept. 2.	,, R. Simpson	50 0 0
	,, J. Paterson	60 0 0
		£570 0 0

Invoice Book

Jan. 5.	To T. Robson	£100 0 0
Feb. 19.	,, Cash	20 0 0
June 1.	,, W. Smith	160 0 0
Sept. 2.	,, T. Robson	90 0 0
	,, W. Smith	30 0 0
		£400 0 0

Customers' Ledger

R. Simpson.

Jan. 1.	To Private Ledger Account	£400	0	0	
June 3.	,, Goods	70	0	0	
Sep. 2.	,, ,,	50	0	0	
		£520	0	0	
Jan. 1.	To Balance	£120	0	0	
Mar. 2.	By Cash and Discount		£400	0	0
Dec. 31.	,, Balance		120	0	0
			£520	0	0

J. Paterson.

Jan. 1.	To Private Ledger Account	£200	0	0	
8.	,, Goods	200	0	0	
July 12.	,, ,,	140	0	0	
Sept. 2.	,, ,,	60	0	0	
		£600	0	0	
Jan. 1.	To Balance	£60	0	0	
June 8.	By Bank		£400	0	0
Aug. 1.	,, Cash		140	0	0
Dec. 31.	,, Balance		60	0	0
			£600	0	0

Creditors' Ledger

T. Robson.

June 6.	To Bank	£150	0	0	
Dec. 31.	,, Balance	90	0	0	
		£240	0	0	
Jan. 1.	By Private Ledger Account		£50	0	0
5.	,, Goods		100	0	0
Sep. 2.	,, ,,		90	0	0
			£240	0	0
Jan. 1.	By Balance		£90	0	0

W. Smith.

Mar. 31.	To Cash and Discount	£150	0	0	Jan. 1.	By Private Ledger Account	£150	0	0
July 19.	,, Bank and Discount	160	0	0	June 1.	,, Goods	160	0	0
Dec. 31.	,, Balance	30	0	0	Sep. 2.	,, ,,	30	0	0
		£340	0	0			£340	0	0
					Jan. 1.	By Balance	£30	0	0

General Ledger

Private Ledger Account.

Jan. 1.	To Creditors' Ledger	£200	0	0	Jan. 1.	By Customers' Ledger	£600	0	0
	,, Balance	700	0	0		,, Cash	100	0	0
						,, Bank	200	0	0
		£900	0	0			£900	0	0
Feb. 28.	To Goods (J. Ross)	£10	0	0	Jan. 1.	By Balance	£700	0	0
June 9.	,, Cash (,,)	100	0	0	Dec. 31.	,, Day Book (Sales)	570	0	0
Dec. 31.	,, Invoice Book (Purchases)	400	0	0		,, Discount	5	0	0
	,, Wages	55	0	0					
	,, Rent, Rates, and Insurance	141	0	0					
	,, Sundry Charges	4	0	0					
	,, Balance	565	0	0					
		£1275	0	0			£1275	0	0
					Jan. 1.	By Balance	£565	0	0

Wages.

Mar. 31.	To Bank	£50	0	0	Dec. 31.	By Private Ledger Account	£55	0	0
Aug. 1.	,, Cash	5	0	0					
		£55	0	0			£55	0	0

Rent, Rates, and Insurance.

June 12.	To Cash (Taxes)	£20	0	0	Dec. 31.	By Private Ledger Account	£141	0	0
Nov. 11.	,, Bank (Rent)	120	0	0					
	,, Cash (Insurance)	1	0	0					
		£141	0	0			£141	0	0

Sundry Charges.

Dec. 31.	To Cash	£4	0	0	Dec. 31.	By Private Ledger Account	£4	0	0

Discount.

Dec. 31.	To Sundries per Cash Book	£20	0	0	Dec. 31.	By Sundries per Cash Book	£25	0	0
	,, Private Ledger Account	5	0	0					
		£25	0	0			£25	0	0

JOURNAL

Jan. 1.	R. Simpson	*Dr.*	£400	0	0			
	J. Paterson	,,	200	0	0			
	To Private Ledger Account					£600	0	0
	for amounts due by Customers at this date							
	Cash	*Dr.*	100	0	0			
	Bank	,,	200	0	0			
	To Private Ledger Account					300	0	0
	for Cash on hand and Cash in Bank at this date							
	Private Ledger Account	*Dr.*	200	0	0			
	To T. Robson					50	0	0
	,, W. Smith					150	0	0
	for liabilities to outside Creditors at this date							
Dec. 31	Discount	*Dr.*	20	0	0			
	To Sundries					20	0	0
	being discount allowed to Customers during year per Cash Book							
	Sundries	*Dr.*	25	0	0			
	To Discount					25	0	0
	being discount allowed by Creditors during year per Cash Book							
	Private Ledger Account	*Dr.*	400	0	0			
	To Sundries					400	0	0
	for Purchases during year							
	Sundries	*Dr.*	570	0	0			
	To Private Ledger Account					570	0	0
	for Sales during year							
	Private Ledger Account	*Dr.*	200	0	0			
	To Wages					55	0	0
	,, Rent, Rates, and Insurance . . .					141	0	0
	,, Sundry Charges					4	0	0
	Discount	*Dr.*	5	0	0			
	To Private Ledger Account					5	0	0
			£2320	0	0	£2320	0	0

If the transactions be followed through the various books and accounts, it will be observed that they are recorded in the ordinary way, with the exception of the closing entries, which require some mention.

Discount.

The totals of the cash book are entered in the discount account at the end of the year; the discount allowed to customers being debited to the discount account, and the discount allowed by creditors being credited. The totals should be posted either weekly or monthly according to circumstances.

Invoice Book Totals.

These are posted to the debit of the "Private Ledger account," as no goods account is to appear in the "outside office" books; and as the credit items appear in the creditors' ledger, the corresponding debit item appears in the "Private Ledger account."

Day Book Totals

The totals of the day book are posted to the credit of the "Private Ledger account," and the debit items appear in the customers' accounts.

With regard to the closing off of the accounts in the general ledger, it will be observed that the balances on the various profit and loss accounts in the

general ledger are carried either to the debit or credit of the "Private Ledger account" in the same way as they would have been carried to the profit and loss account had there been such an account in the "outside office" books.

After closing off all the accounts in this way the private ledger account shows a credit balance of £565, which represents the excess of assets over liabilities appearing in the "outside office" books at 31st December, as will be seen from the following "balance" taken from the "outside office" books:—

Balance of the "Outside Office Books as at 31st December

Cash	£220 0 0	
Bank	285 0 0	
Customers' Ledger	180 0 0	
Creditors' Ledger		£120 0 0
Private Ledger Account		565 0 0
	£685 0 0	£685 0 0

The balance of £565 is the amount due by the "outside office" to the "inner office"; and this is evident, as the debit items in the private ledger account have either been paid for by the "outside office," or the "outside office" has become liable for them while acting for the owner of the business to whom they charge them.

The items on the credit side of the private ledger account have either been received by the "outside office" on behalf of the owner, or the "outside office" will yet receive the amounts.

The books of the "outside office" are thus squared off for the year, and are ready to receive the following year's transactions. But the owner of the business wishes to make up a profit and loss account for the year, and also a balance sheet as at 31st December. To enable him to do this, stock will have been taken, and copies of the private ledger account and "balance" of the "outside office" books will be handed to him by the book-keeper.

When the principal receives a copy of the private ledger account he journalises the entries in it and posts them to the various accounts in his private ledger; the general ledger account in the private ledger appearing, after this is done, with a debit balance of £565, which represents the amount due by the "outside office" to the "inner office," particulars of which the principal sees from the "balance."

The private journal and private ledger will appear as follows, after the closing entries are completed:—

PRIVATE JOURNAL

Jan. 1.	General Ledger Account . . . . . *Dr.*		£900 0 0	
	To Capital			£900 0 0
	for the following assets appearing in the "Outside Office" books, viz.:—			
	Customers	£600		
	Cash	100		
	Bank	200		
		£900		
	Carried forward		£900 0 0	£900 0 0

PRIVATE JOURNAL—*Continued.*

	Brought forward				£900	0	0	£900	0	0
	Capital	*Dr.*			200	0	0			
	To General Ledger Account							200	0	0
	for amount due to creditors appearing in the "Outside Office" books									
	Goods	*Dr.*			400	0	0			
	Furniture and Fittings	,,			50	0	0			
	To Capital							450	0	0
Dec. 31.	General Ledger Account	*Dr.*			575	0	0			
	To Goods (Sales)							570	0	0
	,, Discount							5	0	0
	Capital Account (for Goods)	*Dr.*			10	0	0			
	Do. do. (for Cash)	,,			100	0	0			
	Goods (Purchases)	,,			400	0	0			
	Wages	,,			55	0	0			
	Rent, Rates, and Insurance	,,			141	0	0			
	Sundry Charges	,,			4	0	0			
	To General Ledger Account							710	0	0
	Goods (New Account)	*Dr.*			500	0	0			
	To Goods (Old Account)							500	0	0
	for stock on hand at this date									
	Profit & Loss	*Dr.*			275	0	0			
	To Wages							55	0	0
	,, Rent, Rates, and Insurance							141	0	0
	,, Sundry Charges							4	0	0
	,, Capital							75	0	0
	Goods	*Dr.*			270	0	0			
	Discount	,,			5	0	0			
	To Profit & Loss							275	0	0
					£3885	0	0	£3885	0	0

PRIVATE LEDGER

Capital Account.

Jan. 1.	To General Ledger Account		£200	0	0	Jan. 1.	By General Ledger Account	£900	0	0
	,, Balance		1150	0	0		,, Goods	400	0	0
							,, Furniture and Fittings	50	0	0
			£1350	0	0			£1350	0	0
Feb. 28.	To General Ledger Account (Goods)		£10	0	0	Jan. 1.	By Balance	£1150	0	0
	,, Do. (Cash)		100	0	0	Dec. 31.	,, Profit & Loss	75	0	0
Dec. 31.	,, Balance		1115	0	0					
			£1225	0	0			£1225	0	0
						Jan. 1.	By Balance	£1115	0	0

Goods Account.

Jan. 1.	To Capital		£400	0	0	Dec. 31.	By General Ledger Account (Sales)	£570	0	0
Dec. 31.	,, General Ledger Account (Purchases)		400	0	0		,, Balance (Stock on hand)	500	0	0
	,, Profit & Loss		270	0	0					
			£1070	0	0			£1070	0	0
Jan. 1.	To Balance		£500	0	0					

Furniture and Fittings.

Jan. 1.	To Capital . . .	£50	0	0				

General Ledger Account.

Jan. 1.	To Capital for Sundries, per Journal . .	£900	0	0	Jan. 1.	By Capital for amount due creditors .	£200	0	0
						,, Balance . .	700	0	0
		£900	0	0			£900	0	0
Jan. 1.	To Balance . . .	£700	0	0	Feb. 28.	By J. Ross (Goods) .	£10	0	0
Dec. 31.	,, Day Book (Sales) .	570	0	0	June 9.	,, ,, (Cash) .	100	0	0
	,, Discount . .	5	0	0	Dec. 31.	,, Invoice Book (Purchases) . .	400	0	0
						,, Wages . . .	55	0	0
						,, Rent, Rates, and Insurance . .	141	0	0
						,, Sundry Charges .	4	0	0
						,, Balance . .	565	0	0
		£1275	0	0			£1275	0	0
Jan. 1.	To Balance . . .	£565	0	0					

Discount.

Dec. 31.	To Profit & Loss . .	£5	0	0	Dec. 31.	By General Ledger Account . .	£5	0	0

Wages.

Dec. 31.	To General Ledger Account . .	£55	0	0	Dec. 31.	By Profit & Loss .	£55	0	0

Rent, Rates, and Insurance.

Dec. 31.	To General Ledger Account . .	£141	0	0	Dec. 31.	By Profit & Loss .	£141	0	0

Sundry Charges.

Dec. 31.	To General Ledger Account . .	£4	0	0	Dec. 31.	By Profit & Loss .	£4	0	0

Profit & Loss Account.

Dec. 31.	To Wages . . .	£55	0	0	Dec. 31.	By Goods . . .	£270	0	0
	,, Rent, Rates, and Insurance . .	141	0	0		,, Discount . .	5	0	0
	,, Sundry Charges .	4	0	0					
	,, Capital . . .	75	0	0					
		£275	0	0			£275	0	0

To prove that the posting of the private books is correct, a "balance" may be taken out, which would be as follows:—

Balance of "Inner Office" Books as at 31st December.

Capital				£1115	0 0
Goods	£500	0	0		
Furniture and Fittings	50	0	0		
General Ledger Account	565	0	0		
	£1115	0	0	£1115	0 0

From the above statement and from the "balance" of the "outside office" books, the balance sheet as at 31st December is prepared, and would be as follows:—

BALANCE SHEET as at 31st December.

Assets.				*Liabilities.*			
Due by Customers	£180	0	0	Due to Creditors	£120	0	0
Goods	500	0	0	Capital	1115	0	0
Furniture and Fittings	50	0	0				
Bank	285	0	0				
Cash	220	0	0				
	£1235	0	0		£1235	0	0

From the foregoing example it will be observed that the "outer office" books balance independently of the "inner office" books, and that a complete record of the business is kept in the private books in which the capital and profit are shown. With all books kept on the above system the balance on the General Ledger Account in the private ledger must be the same as the balance on the Private Ledger Account in the general ledger, but on opposite sides, when the books are squared off; the reason for this being that each transaction recorded in the Private Ledger Account in the general ledger is looked upon by the principal as a transaction done on his behalf by the "outside office." In short, the whole system is best understood if the "outside office" is looked upon as the agent of the "inner office," and, as such, intromits with the funds of the principal.

CONSIGNMENT ACCOUNTS

Merchants from time immemorial have found it of advantage to have agents or factors in other countries or towns to whom they send goods to be sold. These agents usually receive a certain commission for their trouble in finding a customer, and are refunded any outlay made by them directly arising from the transaction. The goods so sent are referred to as "Consignments." The person who sends the goods is called the CONSIGNOR, while the party who receives the consignment for sale is called the CONSIGNEE.

The method of recording the various transactions arising out of consignments will be set forth here (1) as recorded in the consignor's books, and (2) as recorded in the consignee's books. A merchant usually acts both as a consignor and as a consignee, and if the method of treating one series of transactions in the books of the consignor and consignee is thoroughly

understood there will be no difficulty in applying the principles involved where a merchant acts in both capacities.

1. Consignor's Books

In businesses where consignments are largely dealt in it is of advantage to have a "consignment ledger," in which are recorded all the consignments sent out; and another ledger may be kept for the personal accounts of the agents, or these may simply be posted to the customers' ledger, showing what they are due or what is due to them for consignments already closed off.

As already mentioned, a merchant may send out consignments and at the same time act as agent for some other merchant and so receive consignments; but, for simplicity, the merchant whose transactions are now given only acts in the capacity of a consignor of goods in addition to his ordinary transactions.

Suppose R. Stark commenced business on 1st January, and that the following were his transactions for the year:—

Jan.	1.	Began business with a capital in cash of			£2000	0	0
	3.	Bought goods for cash			400	0	0
		Bought goods from T. Jones			500	0	0
Mar.	1.	Sold goods to R. Smith			600	0	0
	3.	Consigned to R. Munro, agent in Brazil, goods invoiced at			400	0	0
		Paid freight, insurance, and sundry charges on above consignment			10	0	0
Apr.	30.	Bought goods for cash			200	0	0
		Sold goods for cash			100	0	0
May	1.	Bought goods from T. Jones			300	0	0
June.	15.	Consigned to R. Munro, agent in Brazil, second consignment of goods invoiced at			250	0	0
		Paid freight, insurance, etc., on above consignment			7	0	0
	30.	Paid salaries and wages to date			50	0	0
July	1.	Received "account sales" from R. Munro, showing that first consignment of goods sent on March 1st had realised	£550				
		Less—					
		Charges paid by him	£10				
		Commission	28				
				38			
					512	0	0
Aug.	1.	Paid T. Jones to account			500	0	0
Sep.	30.	Received cash from R. Munro			512	0	0
		Bought goods for cash			400	0	0
Oct.	1.	Received "account sales" from R. Munro, showing that second consignment had realised	£400				
		Less—					
		Charges	£10				
		Commission	20				
				30			
					370	0	0
		for which R. Munro sent bill.					
Nov.	1.	Consigned to J. Fraser in New York goods invoiced at			500	0	0
		Paid charges, etc., on above			15	0	0
Dec.	31.	Value of goods on hand			100	0	0

The "account sales" mentioned in the above set of transactions is a statement sent by an agent to his principal, showing the gross proceeds of the

goods sold and deducting therefrom the expenses incurred by him, together with his commission, bringing out the balance due to the principal, who in this case is the consignor.

The foregoing transactions recorded in the consignor's books would be as follows:—

Cash Book

Jan.	1.	To Capital		£2000	0	0	Jan. 3. By Goods	£400	0	0
Apr.	30.	,, Goods		100	0	0	Mar. 3. ,, Consignment to Brazil, No. 1:— Charges	10	0	0
Sep.	30.	,, R. Munro		512	0	0	Apr. 30. ,, Goods	200	0	0
							June 15. ,, Consignment to Brazil, No. 2:— Charges	7	0	0
							30. ,, Salaries	50	0	0
							Aug. 1. ,, T. Jones	500	0	0
							Sep. 30. ,, Goods	400	0	0
							Nov. 1. ,, Consignment to New York:—Charges	15	0	0
							Dec. 31. ,, Balance	1030	0	0
				£2612	0	0		£2612	0	0
Jan.	1.	To Balance		£1030	0	0				

Day Book

Mar.	1.	By R. Smith	£600 0 0
	3.	,, Consignment to Brazil, No. 1:—Consigned to R. Munro, Agent in Brazil, Goods invoiced at	400 0 0
Apr.	30.	,, Cash	100 0 0
June	15.	,, Consignment to Brazil, No. 2:—Consigned to R. Munro, Agent in Brazil, Goods invoiced at	250 0 0
Nov.	1.	,, Consignment to New York:—Consigned to J. Fraser, Agent in New York, Goods invoiced at	500 0 0
			£1850 0 0

Invoice Book

Jan.	3.	To Cash	£400 0 0
		,, T. Jones	500 0 0
Apr.	30.	,, Cash	200 0 0
May	1.	,, T. Jones	300 0 0
Sep.	30.	,, Cash	400 0 0
			£1800 0 0

Journal

Jan.	1.	Cash	Dr.	£2000 0 0		
		To Capital				£2000 0 0
July.	1.	R. Munro	Dr.	512 0 0		
		To Consignment to Brazil, No. 1 being gross proceeds	£550			512 0 0
		Less— Charges £10				
		Commission 28				
			38			
			£512			
		Carried forward		£2512 0 0		£2512 0 0

JOURNAL—*Continued.*

	Brought forward							£2512	0	0	£2512	0	0
Oct. 1.	R. Munro						*Dr.*	370	0	0			
	To Consignment to Brazil, No. 2										370	0	0
	being gross proceeds			£400									
	Less—												
	Charges		£10										
	Commission		20										
				30									
				£370									
	Bills Receivable						*Dr.*	370	0	0			
	To R. Munro										370	0	0
	Closing Entries.												
Dec. 31.	Sundries						*Dr.*	1850	0	0			
	To Goods										1850	0	0
	for sales during year												
	Goods						*Dr.*	1800	0	0			
	To Sundries										1800	0	0
	for purchases during year												
	Goods (New Account)						*Dr.*	100	0	0			
	To Goods (Old Account)										100	0	0
	for stock on hand at this date												
	Profit & Loss						*Dr.*	365	0	0			
	To Salaries and Wages										50	0	0
	,, Capital										315	0	0
	Goods						*Dr.*	150	0	0			
	Consignment to Brazil, No. 1						,,	102	0	0			
	Consignment to Brazil, No. 2						,,	113	0	0			
	To Profit & Loss										365	0	0
								£7732	0	0	£7732	0	0

LEDGER

T. Jones.

Aug. 1.	To Cash	£500	0	0	Jan. 3.	By Goods	£500	0	0
Dec. 31.	,, Balance	300	0	0	May 1.	,, do.	300	0	0
		£800	0	0			£800	0	0
					Jan. 1.	By Balance	£300	0	0

R. Smith.

Mar. 1.	To Goods	£600	0	0					

R. Munro.

July 1.	To Consignment to Brazil, No. 1, proceeds per journal	£512	0	0	Sept. 30.	By Cash	£512	0	0
Oct. 1.	To Consignment to Brazil, No. 2, proceeds per journal	370	0	0	Oct. 1.	By Bills Receivable	370	0	0
		£882	0	0			£882	0	0

Bills Receivable.

Oct. 1. To R. Munro. . .	£370	0	0				

"CONSIGNMENT" LEDGER

Consignment to Brazil, No. 1.

Mar. 3. To consigned to R. Munro in Brazil .	£400	0	0	July 1. By R. Munro, sundries per journal . .	£512	0	0
,, Cash (charges) .	10	0	0				
Dec. 31. Profit & Loss . .	102	0	0				
	£512	0	0		£512	0	0

Consignment to Brazil, No. 2.

June 15. To consigned to R. Munro in Brazil .	£250	0	0	Oct. 1. By R. Munro, sundries per journal . .	£370	0	0
,, Cash (charges) .	7	0	0				
Dec. 31. ,, Profit and Loss .	113	0	0				
	£370	0	0		£370	0	0

Consignment to New York.

Nov. 1. To consigned to J. Fraser in New York	£500	0	0					
,, Cash (charges) . .	15	0	0					
	£515	0	0					

GENERAL LEDGER

Capital.

Dec. 31. To Balance . . .	£2315	0	0	Jan. 1. By Cash . . .	£2000	0	0
				Dec. 31. ,, Profit & Loss. .	315	0	0
	£2315	0	0		£2315	0	0
				Jan. 1. By Balance . .	£2315	0	0

Salaries and Wages.

June 30. To Cash . . .	£50	0	0	Dec. 31. By Profit & Loss .	£50	0	0

Goods.

Dec. 31. To Sundries . .	£1800	0	0	Dec. 31. By Sundries . .	£1850	0	0
,, Profit & loss . .	150	0	0	,, Balance. . .	100	0	0
	£1950	0	0		£1950	0	0
Jan. 1. To Balance . . .	£100	0	0				

Profit & Loss.

Dec. 31.	To Salaries & Wages .	£50	0	0	Dec. 31.	By Goods . . .	£150	0	0
	,, Capital . . .	315	0	0		,, Consignments :—			
						Brazil, No. 1, £102			
						,, No. 2, £113			
							215	0	0
		£365	0	0			£365	0	0

BALANCE SHEET as at 31st December.

Assets.				*Liabilities.*			
Cash on hand . . .	£1030	0	0	T. Jones	£300	0	0
Goods	100	0	0	Capital	2315	0	0
Consignment	515	0	0				
Bills Receivable . . .	370	0	0				
R. Smith	600	0	0				
	£2615	0	0		£2615	0	0

The method of recording consignments sent by a merchant to his agent may be seen by referring to the above books and accounts, and may be summarised as follows :—

Consignments when Sent Out.—These are entered in the day book at *cost* price and debited to Consignment Accounts in the consignments ledger. The reason for entering them at cost price is, that the goods are merely transferred from one place to another for the purpose of being sold; and such being the case, that fact is recorded in the books by transferring the amount from the debit of Goods to the debit of a Consignment Account. By this means the result of each consignment, as it affects profit and loss, is correctly ascertained.

Charges Paid on Consignments.—When charges are paid on consignments sent out these should be debited to the Consignment Account, as they form part of the cost of the goods consigned.

Receipt of Account Sales.—Immediately the account sales is received, a journal entry should be made debiting the agent with the net proceeds and crediting the particular Consignment Account in the consignments ledger. Cash and bills received from the agent to account of the price will then be posted to the agent's personal account in the ledger. If cash is remitted with the account sales, the cash will be posted from the cash book to the credit of the Consignment Account, and no entry need be made in the personal account of the agent at all.

Treatment of Consignments at Stock-taking.—The balances on the various Consignment Accounts in the consignment ledger are either carried to the Profit and Loss Account or are left standing in the ledger, and so appear as assets in the balance sheet. The balances which are carried to the Profit and Loss Account are the balances on those accounts for which the accounts sales have been rendered and duly recorded.

The other balances in the consignment ledger will then consist of consignments unrealised at date of stock-taking, and these are taken as assets. The balances will consist of the cost price of the consignment, together with the charges paid on the consignment, which, as already mentioned, are looked upon as part of the cost of the goods.

When only part of a consignment has been sold during the year, and at

stock-taking there is a part unsold, the question arises, How much should go to profit and loss, and what figure should be carried down as an asset? The answer to this question depends greatly on circumstances. When, for example, considerable outlay has taken place in connection with the whole consignment, this cannot be all charged against the proceeds of the part realised, but must be allocated to the part remaining unsold, and carried down as a balance. Again, if the consignee, in his account sales of the part consignment sold, deducts the total charges paid on the whole consignment, these charges also will require to be allocated to the part unsold.

It will be observed that the consignments, as they are sent out, are recorded in the day book, but a separate book may be used where it is desired to keep the ordinary sales quite distinct. Such book is called the Consignments Outwards Book.

2. Consignee's Books

R. Munro, in the foregoing set of transactions, is one of the consignees and J. Fraser another. The transactions relating to the two consignments sent to R. Munro would be recorded in his books as follows:—

Cash Book

Sept. 16.	To R. Stark for consignment No. 2 sold today for cash	£400	0	0	June 2.	By R. Stark:— Charges on consignment No. 1	£10	0	0
					Sept. 10.	,, R. Stark	512	0	0
					,, 15.	,, R Stark, charges on consignment No. 2	10	0	0

Journal

June 4.	R. Russell	*Dr.*	£550	0	0	
	To R. Stark					£550	0	0
	(being consignment No. 1)					
	R. Stark	*Dr.*	28	0	0	
	To Commission					28	0	0
	(being commission on consignment No. 1)					
Sept. 16.	R. Stark	*Dr.*	20	0	0	
	To Commission					20	0	0
	(being commission on consignment No. 2)					
,, 20.	R. Stark	*Dr.*	370	0	0	
	To Bills Payable					370	0	0

Ledger

R. Stark.

June 2.	To Cash, charges on consignment No. 1	£10	0	0	June 4.	By R. Russell	£550	0	0
,, 4.	,, Commission	28	0	0	Sep. 16.	,, Cash, for consignment No. 2	400	0	0
Sep. 10.	,, Cash	512	0	0					
,, 15.	,, Cash, charges on consignment No 2	10	0	0					
,, 16.	,, Commission	20	0	0					
,, 20.	,, Bills Payable	370	0	0					
		£950	0	0			£950	0	0

R. Russell.

June 4.	To R. Stark, consignment No. 1	£550	0	0				

Bills Payable.

	Sept. 20. By R. Stark . .	£370	0	0

Commission.

June 4.	By R. Stark, commission on No. 1 consignment . . .	£28	0	0
Sept. 16.	,, R. Stark, commission on No. 2 consignment . . .	20	0	0

On reference being made to the recorded transactions above, it will be observed that no entry is made in the books proper for the consignment when received by R. Munro from R. Stark. R. Munro, however, would keep a book in which he would note all consignments received for sale, and this would let him know at stock-taking which goods were in his store to be sold for others and should not therefore be included in his own stock.[1]

The method of treating the other transactions may be summarised as follows:—

Charges Paid by Consignee.—When a consignee pays charges on a consignment which he has received, he credits his cash and debits the personal account of the consignor, as the consignor is liable to refund him that outlay.

Consignments Sold.—When the consignee has power to dispose of the goods as he thinks best and sells them to one of his own customers, he makes a journal entry debiting his customer and crediting the consignor, as he is liable to the consignor for the proceeds which he will receive from his customer. If the consignee sells the goods for cash he simply debits his cash and credits the consignor.

Commission.—Immediately the consignee effects a sale he is entitled to his commission, so that he makes a journal entry debiting the consignor and crediting the commission account.

Payments by Consignee to Consignor.—The consignee, when he transmits the accounts sales, may either send cash or a bill. If he send cash he credits cash and debits the consignor, and if a bill, debits the consignor and credits bills payable.

The foregoing shows how consignments should be recorded, but it is a common practice for a consignee to treat the consignments received as purchases and post the net amount to the credit of the consignor, after he knows what he has sold them at, and to enter the full amount at which the goods were sold as sales. The commission and charges recovered thus appear in his goods account as profit on the buying and selling of goods, which is most objectionable.

Joint Accounts

When two or more persons join together for the purpose of carrying out a particular business transaction for their mutual benefit, such a transaction is termed a *joint adventure*. It is a partnership of a very temporary kind.

One of the parties to the joint adventure may act as agent and record all the transactions in his books, and finally settle up with the other adventurers; or all the parties may, in some way or other, have transactions relating to the joint adventure, in which case the best way of arriving at how the parties should settle up is to prepare a set of accounts

[1] This book is called the Consignments Inwards Book.

incorporating all the transactions therein and finally show the balances on each of the adventurers' accounts, after crediting or debiting the adventurers with their share of the profit or loss on the joint adventure.

One example of each method will show exactly how such transactions may be recorded.

Suppose John Munro and Robert Fraser agree to enter into a joint adventure in coffee, John Munro acting as manager and carrying through the transactions, receiving as commission 5 per cent on the gross proceeds of the coffee sold. The net profit is to be equally divided. The transactions which John Munro had were as follows:—

Jan.	8.	Bought coffee from A. Smith	£800	0	0
		Paid carriage on same in cash	60	0	0
	10.	Paid dock charges in cash	21	0	0
		Sold part of coffee to John Ferguson	500	0	0
	11.	Received in cash from Robert Fraser	400	0	0
	14.	Paid A. Smith	800	0	0
	18.	Paid for storage of coffee	30	0	0
		Sold remainder of coffee for cash	600	0	0

Recording these transactions in the books of John Munro, the following would be the accounts in his ledger, so far as relating to this transaction:—

Joint Adventure with Robert Fraser.

Jan.	8.	To A. Smith, for coffee	£800	0	0	Jan. 10.	By John Ferguson	£500	0	0
		,, Cash (carriage)	60	0	0	18.	,, Cash	600	0	0
	10.	,, Cash (dock charges)	21	0	0					
	18.	,, Cash (storage)	30	0	0					
		,, Commission, 5 per cent on £1100	55	0	0					
		,, Net Profit, allocated as follows:—								
		Profit & Loss Account	£67							
		Robert Fraser	67							
			134	0	0					
			£1100	0	0			£1100	0	0

Cash Account.

Jan.	11.	To Robert Fraser	£400	0	0	Jan. 8.	By Joint Adventure with R. Fraser (carriage)	£60	0	0
	18.	,, Joint Adventure with R. Fraser, proceeds of coffee sold	600	0	0	10.	,, Joint Adventure with R. Fraser (dock charges)	21	0	0
						14.	,, A. Smith	800	0	0
						18.	,, Joint Adventure with R. Fraser (storage)	30	0	0

A. Smith.

Jan.	14.	To Cash	£800	0	0	Jan. 8.	By Joint Adventure with R. Fraser	£800	0	0

John Ferguson.

Jan.	10.	To Joint Adventure with R. Fraser, for coffee	£500	0	0					

Robert Fraser.

Jan. 11.	By Cash . .	£400	0	0
18.	,, Joint Adventure, share of profit .	67	0	0
		£467	0	0

Commission.

Jan. 18.	By Joint Adventure with R. Fraser . .	£55	0	0

Profit and Loss.

Jan. 18.	By Joint Adventure with R. Fraser . .	£67	0	0

From the above Ledger Accounts it will be seen how John Munro would record these transactions in his books. The adventure closes with a balance due to Robert Fraser of £467, consisting of the £400 cash and his share of the profit £67. The commission of 5 per cent on £1100, which is debited to the Joint Adventure and credited to the Commission Account, is what John Munro earns on the adventure over and above his share of the profit. By debiting this commission to the Joint Adventure Account he thus bears a share of it along with Robert Fraser.

Immediately John Munro had ascertained the result of the joint adventure as regards profits or losses, he would acquaint Robert Fraser of the fact by sending a statement showing how the profit or loss had arisen. Robert Fraser would then record in his books the result, so far as he is concerned.

In the example given above, when Robert Fraser sent the £400 cash to John Munro, he would credit his cash and debit his Joint Adventure Account with that amount. Immediately he heard that the result of the adventure was a profit of £134, of which he was entitled to £67, he would debit the Joint Adventure Account and credit his Profit and Loss Account with this latter amount. He might then transfer the £467 to the debit of John Munro. In Robert Fraser's books, therefore, John Munro would appear as his debtor for £467; while, on reference being made to the Ledger Accounts above, Robert Fraser appears in John Munro's books as his creditor to the extent of £467.

In the foregoing example one of the adventurers has acted as agent and has recorded all the transactions in his books; but in some cases both the parties may have transactions relating to the adventure, and it will thus be seen that both parties will have to record their individual transactions in their own books.

Suppose John Young and Robert Smith enter into a joint adventure in tea. On 1st January John Young buys £1000 worth and pays for it in cash. Robert Smith pays the freight, amounting to £40. John Young, on 4th January, sells part of the tea for £400, receiving proceeds in cash. Robert Smith receives cash for another part of the tea sold for £600, and sends £500 cash to John Young. Robert Smith agrees to take over the remainder of the tea for £200.

In this example it is seen that both parties have had dealings in the joint adventure, and one way of arriving at how the parties stand in

relation to one another is to prepare a set of Joint Adventure Accounts. The accounts necessary would be:—

1. Joint Adventure Account.
2. John Young's Account.
3. Robert Smith's Account.

The following would be the working out of the above transactions in the style indicated. The principle adopted is to give each adventurer credit for what he pays on account of the adventure, and debit him with what he receives on account of the joint adventure.

Joint Adventure Account.

Jan.	1.	To John Young, cost of tea	£1000	0	0	Jan. 4.	By John Young, part goods sold	£400	0	0
		,, Robert Smith, for freight	40	0	0		,, Robert Smith, part goods sold	600	0	0
	4.	,, Net Profit:—					,, Robert Smith, goods taken over by him	200	0	0
		John Young £80 0 0								
		Robert Smith 80 0 0								
			160	0	0					
			£1200	0	0			£1200	0	0

John Young.

Jan.	4.	To Joint Adventure, for part of goods sold	£400	0	0	Jan. 1.	By Joint Adventure, for goods supplied	£1000	0	0
		,, Robert Smith, for cash from him	500	0	0	4.	,, Joint Adventure, share of profit	80	0	0
		,, Balance	180	0	0					
			£1080	0	0			£1080	0	0
							By Balance	£180	0	0

Robert Smith.

Jan.	4.	To Joint Adventure, for part of goods sold	£600	0	0	Jan. 1.	By Joint Adventure, for freight	£40	0	0
		,, Joint Adventure, goods taken over	200	0	0	4.	,, John Young, cash sent him	500	0	0
							,, Joint Adventure, share of profit	80	0	0
							,, Balance	180	0	0
			£800	0	0			£800	0	0
		To Balance	£180	0	0					

It will thus be seen that the Adventure Accounts close by John Young having a credit balance of £180, which means that he is a creditor of the joint adventure to that extent, while Robert Smith has a debit balance of £180, which means he is a debtor of the joint adventure to that extent.

This transaction would therefore be squared up by Robert Smith paying John Young £180.

This method of arriving at how the parties stand as regards each other can always be worked out, provided all the transactions are given which each has with the affairs of the joint adventure.

There is, however, still to be explained how John Young and Robert Smith would record these transactions in their separate books. It is evident that John Young must have in his books at the termination of

the joint adventure a balance due to him of £180, while Robert Smith must have a liability of £180 in his books. A Joint Adventure Account would have to be prepared bringing out the profit as before, and this, with the other transactions, would enable the two parties to square off their accounts relating to the adventure.

The following would be the Ledger Accounts as appearing in (1) John Young's books and (2) Robert Smith's books:—

1. John Young's Books

Cash.

Jan. 4.	To Joint Adventure with R. Smith, for goods sold	£400	0	0	Jan. 1.	By Joint Adventure with R. Smith	£1000	0	0
	,, Joint Adventure, cash from R. Smith	500	0	0					

Joint Adventure with R. Smith.

Jan. 1.	To Cash for goods	£1000	0	0	Jan. 4.	By Cash	£400	0	0
4.	,, Profit & Loss Account, for profit on adventure	80	0	0		,, do.	500	0	0
						,, Balance	180	0	0
		£1080	0	0			£1080	0	0
	To Balance	£180	0	0					

Profit and Loss.

					Jan. 4.	By Joint Adventure with R. Smith	£80	0	0

2. Robert Smith's Books

Cash.

Jan. 4.	To Joint Adventure, part of goods sold	£600	0	0	Jan. 1.	By Joint Adventure with John Young (freight)	£40	0	0
						,, Joint Adventure, cash to John Young	500	0	0

Joint Adventure with John Young.

Jan. 1.	To Cash (freight)	£40	0	0	Jan. 4.	By Cash, part goods sold	£600	0	0
4.	,, Cash to John Young	500	0	0		,, Goods	200	0	0
	,, Profit & Loss Account, for profit on adventure	80	0	0					
	,, Balance	180	0	0					
		£800	0	0			£800	0	0
						By Balance	£180	0	0

Goods.

Jan. 4.	To Joint Adventure with John Young	£200	0	0					

Profit and Loss.

					Jan. 4.	By Joint Adventure with John Young	£80	0	0

On reference being made to the above ledger accounts in Robert Smith and John Young's books, it will be observed that immediately one of them had a transaction he debited or credited the joint adventure account with the amount, so that, until the adventure is closed off, the balance on the joint adventure account may represent either an asset or a liability. The entry of profit £80 is passed through the books after the joint adventure account has been completed.

Outstanding Charges

As a rule, when books are being squared off with the view of preparing the profit and loss account and balance sheet, there are various charges accrued but not paid, such as rent, wages, taxes, etc., and it is quite evident that if an accurate profit and loss account is to be prepared, these charges must be incorporated in the books. The following remarks show how such items may be treated. In a set of books where a private ledger is used, such outstanding charges can be omitted altogether from the ordinary books of the concern, and may be treated solely in the private ledger. If the manner of recording these outstanding charges as set forth here is fully understood, the student will have no difficulty in applying the principles to a set of books where a private ledger is involved.

As the principles adopted apply equally to all such charges, one account may be taken, such as "advertising," and the method of treating "advertising" accrued but unpaid at 31st December shown. The "advertising" account at the end of the year would show on the debit side (assuming that no personal accounts are kept for the parties through whom the advertisements are made) all the cash paid for advertising during the year. The account would be in some such form as the following:—

Advertising.

Jan. 27.	To Cash	.	.	.	£10	0	0		
June 4.	,, do.	.	.	.	4	0	0		
Dec. 24.	,, do.	.	.	.	12	0	0		
					£26	0	0		

So that £26 has been paid during the year, and, if nothing was due at 31st December, the credit item on this account would be "By Profit & Loss, £26," and the account would be squared off. But at 31st December it is known that £10 is due for advertising to John Smith (who has no personal account in the ledger), and therefore the total charge which should be debited to profit and loss account is £36. Recording this fact, that £36 should go to the profit and loss account, the advertising account would appear as follows:—

Advertising Account.

Jan. 27.	To Cash	.	.	.	£10	0	0	Dec. 31.	By Profit & Loss	.	.	£36	0 0
June 4.	,, do.	.	.	.	4	0	0						
Dec. 24.	,, do.	.	.	.	12	0	0						
					£26	0	0						

It will thus be seen that there is a credit balance of £10 on the advertising account, which represents the liability of £10 to John Smith. This balance may be treated at 31st December in three different ways:—

First Method

The balance on the advertising account may simply be carried down as a balance on that account, as follows :—

Advertising Account.

Jan. 27.	To Cash			£10	0	0	Dec. 31. By Profit & Loss		£36	0	0
June 4.	,, do.			4	0	0					
Dec. 24.	,, do.			12	0	0					
31.	,, Balance			10	0	0					
				£36	0	0			£36	0	0
							Jan. 1. By Balance		£10	0	0

The balance, being a credit balance, would appear in the balance sheet as a liability. This is the most direct and satisfactory method of treating such outstanding charges.

Second Method

A very common method of treating the balance of £10 on the Advertising Account is to carry it to an account headed Outstanding Accounts. The Advertising Account would then be squared off, and there would be a credit balance of £10 on the account headed Outstanding Accounts, which would, as under the first method, appear in the balance sheet as a liability. The Advertising Account, treating the balance of £10 in this way, would appear as follows :—

Advertising Account.

Jan. 27.	To Cash			£10	0	0	Dec. 31. By Profit & Loss		£36	0	0
June 4.	,, ,,			4	0	0					
Dec. 24.	,, ,,			12	0	0					
31.	,, Outstanding Accounts			10	0	0					
				£36	0	0			£36	0	0

Third Method

The third method is to carry the £10 to the credit of John Smith. The liability would then appear on the credit of John Smith's Account, and the Advertising Account would be as follows :—

Advertising Account.

Jan. 27.	To Cash			£10	0	0	Dec. 31. By Profit & Loss		£36	0	0
June 4.	,, ,,			4	0	0					
Dec. 24.	,, ,,			12	0	0					
31.	,, John Smith			10	0	0					
				£36	0	0			£36	0	0

It will thus be seen that whichever method is adopted of recording the items the result is the same; that is, a liability of £10 is created, while the Profit and Loss Account is debited with £10 over and above what has been paid.

The first method is by far the best, and mistakes will not so easily be made as by the other methods. When the £10 is paid during the next year it would, in the first method, be debited direct to the Advertising Account. Under the second method it might also be posted to the debit of the Advertising Account, along with other advertising accounts, and the Accounts Outstanding Account would require to be debited at the beginning of the year and the Advertising Account credited. This is one way in which the correct amount of advertising for the year would be arrived at; but this necessitates four entries, whereas the first method requires only two entries.

Another way of treating the amount when paid, such amount having been recorded the previous year as shown by the second method, is to post it to the Accounts Outstanding Account direct. But the disadvantage of this method is seen from the fact that, if the £10 mentioned was paid with other accounts for advertising, the amount would require to be split up in the cash book and posted to the two accounts, namely, Advertising and Accounts Outstanding.

Under the third method the £10 should be posted when paid to the debit of John Smith, unless at the beginning of the year the £10 has been debited to his account and credited to advertising.

Under the first method when anything is paid for advertising, even though it be an old account for the previous year, the amount is debited to Advertising Account, and no adjusting entries are required.

The only objection to the first method appears to be that a balance is carried down on a Profit and Loss Account, which is usually squared off at the end of the year.

Suppose that at 31st December there were advertising contracts which had been paid for in advance, and that of the total cash paid £15 was unexpired and effeiring to the next year. This balance of £15 would be credited to the Advertising Account and carried down as a debit balance to begin the next year with. This amount would be taken into the balance sheet as an asset, and by being carried down on the debit side of the Advertising Account would thus go against next year's profits. The above method is the most direct; but, as was the case with charges accrued, other methods are adopted, such as carrying the £15 from the credit of Advertising Account to the debit of an account which might be headed Charges Unexpired or Advertising Contracts Paid for but not Executed.

The illustrations given above show how charges accrued and charges unexpired would be treated in the Ledger Accounts. In preparing a Profit and Loss Account and balance sheet from a trial balance with such items as wages unpaid, rent accrued, insurance unexpired, and advertising unexpired to be allowed for, the method of incorporating these particulars in the Profit and Loss Account and balance sheet will readily be seen if the foregoing illustrations have been understood. The method is as follows:—

Charges Accrued but Unpaid.—To the figure appearing at the debit of the Ledger Account in the trial balance add the amount given as accrued but unpaid. Enter this total to the debit of profit and loss, and enter the amount unpaid as a liability in the balance sheet. For example, suppose £100 to be at the debit of rent in the trial balance, and £20 as the amount of rent unpaid, then £120 would go to the debit of Profit and Loss Account, and £20 would be entered in the balance sheet as a liability as "rent unpaid."

Charges Unexpired.—From the figure appearing at the debit of the

ledger account in the trial balance take away the portion unexpired, and enter the difference to the debit of profit and loss account. Then enter in the balance sheet the amount unexpired as an asset. Thus, if £20 is at the debit of insurance in the trial balance, and £5 is known to be the portion unexpired, that is, effeiring to the next period, then £15 would go to the debit of profit and loss, and £5 would appear as an asset in the balance sheet as "insurance unexpired."

In the illustrations given above it has been assumed that there would be debit balances on the ledger accounts; but it might so happen that there were credit balances, in which case the amount of charges accrued but unpaid would be deducted from credit figure, and the amount of charges unexpired would be added to the credit figure, and the results so found carried to profit and loss account.

Single Entry Book-keeping

Some writers in dealing with this subject give examples of how transactions should be recorded under the so-called system of "single entry." Under the present heading, however, the method of recording transactions is not given, for the simple reason that no fixed rules or system can be formulated, as there is no underlying theory as in "double entry" book-keeping. In fact, as already explained, single entry book-keeping is merely incomplete or defective book-keeping. The so-called systems of book-keeping by "single entry" are many and various, and the method of arriving at the profit or loss made in businesses where the book-keeping is incomplete is alone dealt with here.

How to Arrive at the Profit or Loss where the Books are Incomplete

The term "single entry" is applied to books kept in various ways; in fact, books kept in any other way than by "double entry" are said to be kept by "single entry." Books kept by "single entry" may simply mean that a man in business keeps a personal ledger and nothing else, or it may mean that he keeps a cash book, or a cash book and personal ledgers.

The chief distinction between book-keeping by "single entry" and that by "double entry" is that, in the first case, the books cannot be brought to a correct balance, while by the latter method the books are capable at all times of being brought to a correct balance, as the total debits must equal the total credits.

In many fairly large and a great many small businesses book-keeping by double entry is not adopted; but in such businesses a record is invariably kept of the cash transactions in the cash book, and from thence posted to the customers' and creditors' accounts in the ledger. In many cases invoice books and day books are kept, but are never added, or are so slovenly kept that they are incapable of being added. However the other books may be kept, the ledger accounts relating to customers are usually correct. With regard to creditors' accounts, the goods received from such creditors may or may not be posted to the ledger accounts when received. In many cases no ledger accounts appear for creditors at all, and the cash is paid when the accounts are rendered, the accounts having first of all been checked from the invoices sent.

A man keeping his books in some such manner as described above

—that is, not on the complete double entry principle—cannot prepare a detailed profit and loss account showing the gross profit on the goods sold and the net profit after charging up all the necessary expenses. But although he cannot prepare a detailed profit and loss account, he can, if he has kept a note of his personal drawings from the business and what cash he has put into the business during any year, arrive at the net profit he has made during that year.

Such persons usually make up a state of affairs at the end of each year or half-year, as the case may be. If such a state of affairs has been prepared at the end of a year, and during the year which follows a note is kept of the cash drawn from the business and the cash put into the business by the owner, then if a state of affairs is prepared at the end of the year it is an easy matter to arrive at the net profit made during that year.

Let it be supposed that R. Russell prepares a state of affairs at 1st January, and finds his position to be as follows:—

STATE OF AFFAIRS as at 1st January.

Assets.		*Liabilities.*	
Cash on Hand	£10 0 0	Due to Creditors	£200 0 0
Cash in Bank	500 0 0	Capital in Business	1460 0 0
Due by Customers	700 0 0		
Goods on Hand	400 0 0		
Office Furniture	50 0 0		
	£1660 0 0		£1660 0 0

The capital is, of course, the difference between his assets and liabilities.

During the year he carries on business, and keeps his books by single entry. At 31st December he finds that during the year he has drawn out cash from his business amounting to £360, and has at various times financed the business by putting cash into it amounting to £100.

On 31st December he takes stock, and makes up lists of his customers and creditors, re-values his furniture, and finds his State of Affairs to be as follows:—

STATE OF AFFAIRS as at 31st December.

Assets.		*Liabilities.*	
Cash on Hand	£70 0 0	Due to Creditors	£600 0 0
Cash in Bank	400 0 0	Capital	1510 0 0
Due by Customers	1000 0 0		
Goods on Hand	600 0 0		
Office Furniture	40 0 0		
	£2110 0 0		£2110 0 0

From these particulars the profit made during the year may be reasoned out as follows:—

The capital at 1st January was £1460. It now amounts at 31st December to £1510, being an increase of £50. But the capital at 31st December would have been £260—£360 drawings less £100 cash put in—more had this amount remained in the business, so that the capital has really increased by £310, which represents the profit earned during the year.

This reasoning will perhaps be better understood if the profit earned is brought out by means of a Capital Account. The Capital Account would appear as follows:—

Capital Account.

Dec. 31.	To Cash	£360	0	0	Jan. 1. By Balance	£1460	0	0
	,, Balance	1510	0	0	Dec. 31. ,, Cash	100	0	0
					,, Profit	310	0	0*
		£1870	0	0		£1870	0	0
					Jan. 1. By Balance	£1510	0	0

The figure marked with an asterisk is the figure required, and, by inserting the other figures which are all known, the profit or the loss can be obtained. The capital at the beginning—£1460, is placed on the credit side, together with the cash put into the business. On the debit side are placed the drawings—£360, and the balance of capital at the end—£1510, which is got from the State of Affairs. To make the account balance £310 must be credited, and as the profit always goes to the credit of the Capital Account when transferred from the Profit and Loss Account, it is at once seen that the £310 represents profit.

This method of arriving at the profit or loss is always the most direct, and the result is forced out, as it were, by using the figures which are known. In connection with partnership questions where the books are incomplete, this method may be seen to advantage, as in the following example:—

A and B are in partnership on equal terms, and their position at 1st January was as follows:—

STATE OF AFFAIRS as at 1st January.

Assets.				*Liabilities.*				
Cash on Hand	£90	0	0	Due to Creditors			£890	0 0
Cash in Bank	1200	0	0	Capital—				
Due by Customers	1000	0	0	A	£2000	0 0		
Goods on Hand	1600	0	0	B	1000	0 0		
							3000	0 0
	£3890	0	0				£3890	0 0

There is a stipulation in their deed of copartnery to the effect that interest at 5 per cent is to be allowed on partners' capital, and that A has to be credited with a salary of £200 before the profits are divided. During the year A has drawn out cash from the business at various times, amounting to £200, while B has put cash into the business amounting to £1000. At 31st December interest is allowed and charged on B's Capital Account, and results in A being entitled to be credited with £93 and B with £75 in respect of interest. Their position at 31st December was as follows:—

STATE OF AFFAIRS as at 31st December.

Assets.				*Liabilities.*			
Cash on Hand	£170	0	0	Due to Creditors	£600	0	0
Cash in Bank	1900	0	0	Capital	4370	0	0
Due by Customers	1400	0	0				
Goods on Hand	1500	0	0				
	£4970	0	0		£4970	0	0

From the above state of affairs it will be observed that the joint capital amounts to £4370, but it is quite evident that this figure cannot be allocated between A and B till the profit is ascertained. Using the "capital account" method, and opening a joint capital account for A and B, we find the profit to be £202, as follows:—

JOINT CAPITAL ACCOUNT OF A AND B

Dec. 31.	To Cash (A)		£200	0	0	Jan. 1.	By Balance (per state of affairs at this date)	£3000	0	0
	,, Balance (per state of affairs at this date)		4370	0	0	Dec. 31.	,, Cash (B)	1000	0	0
							,, Interest—			
							A . £93 0 0			
							B . 75 0 0			
								168	0	0
							,, Salary (A)	200	0	0
								£4368	0	0
							,, Profit	202	0	0
			£4570	0	0			£4570	0	0

From the above joint capital account it will be observed that the profit for the year has been £202, and, having ascertained this, the shares of A and B in the capital of £4370 may be found by preparing capital accounts for each partner as follows:—

A'S CAPITAL ACCOUNT

Dec. 31.	To Cash		£200	0	0	Jan. 1.	By Balance	£2000	0	0
	,, Balance		2194	0	0	Dec. 31.	,, Interest	93	0	0
							,, Salary	200	0	0
							,, Share of Profit, one-half of £202	101	0	0
			£2394	0	0			£2394	0	0
						Jan. 1.	By Balance	£2194	0	0

B'S CAPITAL ACCOUNT

Dec. 31.	To Balance		£2176	0	0	Jan. 1.	By Balance	£1000	0	0
						June 30.	,, Cash	1000	0	0
						Dec. 31.	,, Interest	75	0	0
							,, Share of Profit, one-half of £202	101	0	0
			£2176	0	0			£2176	0	0
						Jan. 1.	By Balance	£2176	0	0

It is now ascertained how the capital of £4370 is held:

A holds	£2194
B ,,	2176
	£4370

In all questions of partnership, where the books are not complete, the profit must first be ascertained by means of a joint capital account, and separate

capital accounts of the partners are then prepared, and the capital, as shown by the state of affairs, is thus allocated between the partners.

Many other questions may arise in incomplete book-keeping; but if the method of preparing the capital account is known, no difficulty will be experienced in arriving at the profit or loss, which is the first thing necessary to be found out. Having ascertained the profit, partnership questions may be worked out so as to allocate the capital held by the partners, as shown above.

The great advantage of book-keeping by double entry over that of single entry is that, by the former, detailed profit and loss accounts may be prepared each year and compared with previous years, and the source of the increase or decrease in the profit of any year thus ascertained, while by the latter system this cannot be done. The causes leading up to an increase in the profit of one year compared with another are unascertainable so far as books kept by single entry are concerned.

Books kept on the single entry system are not capable of being brought to a balance at any time, while by double entry this is always possible.

With books kept on the single entry system fraud can easily be committed, which would be impossible by double entry. For example, let it be assumed that a person keeps a cash book and a personal ledger, but does not keep his books by double entry. When a customer who is due £12 pays his account, the cashier could enter £10 as received and pocket £2, while in the ledger he marks off the £12 as having been paid. Such a fraud could not be discovered unless all the transactions were checked!

Book-keeping: History.—Wherever trade was carried on and credit had been introduced, some elementary form of book-keeping—whether the notched stick, the chalk-marked door-back, or the Babylonian tablet—was necessary. In following the history of trade we trace the history of book-keeping.

For the origin of book-keeping we must therefore go back to the origin of trade and credit, but for the birth of the modern science we have only to go back to the time when the development of commerce rendered necessary—and the introduction of Arabic figures made possible—a more complete system. Italy was one of the first among European nations to adopt the Arabic system of numeration. Venice, in the fifteenth century, was in the zenith of its prosperity, and was the focus of European commerce. Accordingly it was in Venice and in the fourteenth or fifteenth century that book-keeping by double entry originated. Who invented it cannot be told. It must first have been used in a limited fashion—the treatises which exist showing that it was more than one hundred years before its full use was realised; but the root idea, the twofold aspect of every transaction, must have been hit upon by some forgotten genius. The oldest writers presume the pre-existence of it. Pacioli, whose book was published not long after the invention of printing, says: "We shall follow the method of Venice, which, without doubt, is much to be preferred before all others." Benedetto Cotrugli, whose treatise was written in 1458, though not printed till 1573, describes a system of double entry, but does not claim originality for it.

With the decay of Venetian commerce and the rise of that of the Netherlands, we find the centre of activity in the development of book-keeping moving by way of Nüremberg to Antwerp and Amsterdam, whence, still following the course of trade, it crossed over in the beginning of the seventeenth century to Great Britain. The earlier British writers acknowledge their indebtedness to the Dutch. Dafforne, one of the ablest of them, whose book is a remarkably acute and complete exposition of double entry, received his training in Amsterdam.

In Great Britain the science has advanced as commerce has flourished. It took time for the accurate and finished journalising method of the early theorists to permeate business circles, and again it took time before that elaborate system gave way to the more direct and practical methods of the present day. During the last half-century an immense amount of ingenuity has been applied to the perfection of systems of book-keeping, and the many skilful adaptations of the principle of double entry to special circumstances which have recently been made

form, with the history of their evolution, a wonderful testimony to the value of the discovery of that nameless old Venetian book-keeper. RICHARD BROWN.

Book-keeping: Literature.—The following is a list, with notes, of printed books on book-keeping. It is as full—to the end of the seventeenth century—as the writer can make it, containing every book in the European languages of which he can find a trace. No one can claim completeness for a bibliography of ancient authors, but there is no published list known to the writer which contains even half the number of the books here mentioned. From the beginning of the eighteenth century only English books are included in the list, and, especially as regards publications of recent date, only a few of the more important.

Venice, 1494. LUCAS PACIOLI. "Frater Lucas de burgo Sancti Sepulcri." "Sūma de Arithmetica Geometria Proportioni e Proportionalita."

Another edition. *Tusculano*, 1523.

Another book entitled "La Scuola perfetta dei mercanti di Fra Pacciolo di Borgo, Santo Sepulcro." *Venice*, 1504.

The earliest known printed book on book-keeping. The author follows the "method of Venice," and the system described is what we call double entry.

Nürnberg, 1521. HEINRICH SCHREIBER. "Henrichen Gramateum." "Behend vnd Kunstlich Rechnung nach der Regel vnd welhisch practic," etc.

Erfurt, 1523 (written and completed at Vienna in 1518). "Henricus Grammateus." "Rechenbüchlin, Künstlich, behend vnd gewiss, auff alle Kauffmannschafft gericht."

Other editions: 1545, and *Frankfurt*, 1572.

The oldest German treatise on the subject. Describes a kind of book-keeping closely corresponding to single entry.

Venice, 1525. GIOVANNI ANTONIO TAGLIENTE. "Considerando io Joanni Antonio Taiente . . . el laudabile modo de tenere conto de libro dopio cioe, el Zornale," etc.

This small book illustrates the use of Dr. and Cr. by examples, but gives no form of a ledger.

Nuremberg, 1531. JOANN GOTLIEB. "Ein Teutsch verstendig Buchhalten für Herren oder Gesellschaffter inhalt Wellischem process," etc.

Another edition. *Nürnberg*, 1546.

Describes the rudiments of Italian book-keeping, but not very clearly.

Venice, 1534. DOMINICO MANZONI. "Quaderno doppio col suo giornale secondo il costume di Venetia."

Another edition. *Venice*, 1554.

Other editions bearing the title "Libro mercantile ordinato col suo giornale et alfabeto per tener conti doppi al modo di Venetia." *Venice*, 1540, 1564, 1565, 1573, and 1574.

A close copy of Pacioli, with simply the addition of examples.

Milan, 1539. GIROLAMO CARDANO. "Practica Arithmetice et mensurandi Singularis."

Reprinted in the author's collected works. *Leyden*, 1663.

Chapter LX., headed "De ratione librorum tractandorum," deals briefly with book-keeping.

London, 1543. HUGH OLDCASTLE, Scholemaster. "A profitable Treatyce called the Instrument or Boke to learne to knowe the good order of the Kepyng of the famouse reconynge, called in Latyn, Dare and Habere, and in Englyshe, Debitor and Creditor."

Reprinted by John Mellis in 1588, *vide infra*. Believed to be the first English book on book-keeping, but no existing copy of this edition is now known.

Antwerp, 1543. JAN YMPYN CHRISTOFFELS. "Nieuwe Instructie Ende bewijs der lo-offelijcker Consten des Rekenboecks ende Rekeninghe te houdene nae die Italiaensche maniere," etc.

A French translation published in *Antwerp*, 1543, entitled "Nouuelle Instruction et Remonstration de la tres excellente ſciēce du liure de Compte, pour compter & mener comptez, a la maniere d'Itallie," etc.

An English translation published in *London*, 1547, entitled "A notable and very excellente woorke, expressyng and declaryng the manner and forme how to kepe a boke of accomptes or reconynges, verie expedient and necessary to all Marchantes, Receiuers, Auditors, Notaries, and all others. Translated with greate diligence out of the Italian toung into Dutche, and out of Dutche into Frenche, and now out of Frenche into Englishe."

The earliest known Dutch and French works on book-keeping. Part I. is practically an adaptation of Pacioli. Part II. contains excellent examples of Journal, Ledger, Inventories, etc.

Nürnberg, 1549. WOLFFGANG SCHWEICKER, Senior. "Zwifach Buchhalten, sammt seinē Giornal desselben Beschlus auch Rechnung zuthun," etc.

An excellent book, drawn largely from Pacioli and Manzoni.

Antwerp, 1550. VALENTIN MENNHER DE KEMPTEN. "Practique brifue pour cyfrer et tenir Liures de Compte touchant le Principal train de marchandise."

A Spanish translation by ANTICH ROCHA, published at *Barcelona* in 1565, entitled "Compendis y breue instruction por tener Libros de Cuenta, Deudas, y de Mercaduria."

Another edition (in French) published at *Lyon*, 1591.

Another book by Mennher, published at *Antwerp* in 1565, entitled "Practique pour brievement apprendre à Ciffrer, & tenir Liure de Comptes, auec la Regle de Coss, & Geometrie."

Mennher added various improvements in details to the system of double entry.

London, 1553. JAMES PEELE. "The maner and fourme how to kepe a perfecte reconyng after the order of the most worthie and notable accompte of Debitour and Creditour set forthe in certain tables with a declaracion thereunto belongyng."

Another work by Peele was published in London in 1569, entitled "The patheway to perfectness in the accomptes of Debitour and Creditour: in manner of a dialogue very pleasant and proffitable for Marchaunts and all other that minde to frequent the same, once againe set forthe and very much enlarged," etc.

In both books a system of double entry is described such as Peele believed to be used in Venice. In the earlier publication the "great booke of accomptes" is called "Quaterne" (from the Italian "Quaderno"), in the later "Leager."

Venice (?) 1558. ALVISE CASANOVA. "Specchio lucidissimo."

Said to be simply a copy of Pacioli and Manzoni.

Venice, 1573. BENEDETTO COTRUGLI. "Della mercatura e del mercante perfetto."

A French translation, dated 1582.

This book is stated to have been written and completed in 1458, though not printed till 1573. There is a description of mercantile book-keeping with brief rules which indicate familiarity with the system of double entry.

Antwerp (?) 1573. MICHIEL COIGNET. A Dutch work on book-keeping.

Mantua, 1586. ANGELO PIETRA. "Indrizzo de gli Economi o sia ordinatissima instruttione da regolatamente formare qualunque scrittura in un libro doppio."

Treats of the accounts of monasteries.

London, 1588. JOHN MELLIS. "A briefe instruction and maner how to keepe bookes of Accomptes after the order of Debitor and Creditor, and as well for proper Accompts pustible, etc. By the three books named the Memoriall Journall and Leager, and of other necessaries appertaining to a good and diligent marchant. The which of all other reckoninges is most lawdable: for this treatise well and sufficiently knowen, all other wayes and maners may be the easier and sooner discerned learned and knowen. Newely augmented and set forth by John Mellis, Scholemaister."

The author acknowledges that he is but the "reneuer and reviver of an auncient old copie" of Oldcastle referred to above. The original portion of the work consists of some forms of books and a treatise on arithmetic. The system of book-keeping described is "after the forme of Venice."

Amsterdam, 1588. NICOLAUS PETRI DAVENTRIENSIS. Also 1595 and 1596. The last entitled "Practicque omte Leeren Rekenen Cypheren ende Boeckhouwen met die Reghel Coss," etc.

Contains arithmetic, algebra, geometry, and an example of book-keeping.

Rotterdam (?) 1590. ELEIUS EDUARD LEON MELLEMA. A Dutch writer.

Madrid, 1590. B. S. DE SOLORZANA. "Libro de Caxa y manual de Cuentas de Mercaderes." "Compendio para tener y regir los libros de Cuentas de Mercaderes."

—— (?) 1592. BARTHELEMY DE RENTERGHEM. A Dutch writer.

Hamburg, 1594. PASSHIER-GOESSENS. A good German writer.

—— (?) 1595. MARTINUS WENCESLAUS. A Dutch writer.

London, 1596. W. P. "The Pathway to Knowledge. Conteyning certaine briefe Tables of English waights and measures. . . . With the Rules of Cossicke, Surd, Binomicall, and Residuall Numbers, and the rule of Equation or of Algebere . . . and lastly the order of keeping of a Marchant's booke, after the Italian manner, by Debitor and Creditor. . . . Written in Dutch, and translated into English by W. P."

—— (?) 1598. MARTIN VAN DEN DYCKE. A Dutch writer.

Middelburg, 1603. JAN COUTEREELS of Antwerp.

Leyden, 1605–7. SIMON STEVIN of Bruges. "Mathematica hypomnemata," etc.

The second volume of this work treats of "Book-keeping for Princes (or States) after the Italian manner."

—— (?) 1609. SIMONE GRISOGONO DI ZARA. "Mercante arrichito dal perfetto quaderniere."

Venice, 1610. GIOVANNI ANTONIO MOSCHETTI. "Dell' universal trattato di libri doppi."

Follows Tagliente, Manzoni, and Casanova.

Amsterdam, 1615. HENDRICK WANINGHEN VAN CAMPEN. "Tresoor vant Italiaens Boeck-Houden."

Other editions by IOANNES BUINGHA, published in Amsterdam in 1627 and 1639.

Amsterdam, 1616. JAN WILLEMSZ von Löwen. "Goulden Schoole."

London, 1622. GERARD MALYNES, Merchant. "Consuetudo, vel, Lex Mercatoria, or, The Antient Law-Merchant. Divided into three parts: according to the essentiall parts of Trafficke, Necessarie for all Statesmen, Judges, Magistrates, Temporall and Civile Lawyers, Mintmen, Merchants, Mariners, and all others negotiating in all places of the world."

Has a chapter on the keeping of merchants' accounts by double entry.

London, 1632. I. CARPENTER, Gent. "A most excellent instruction for the . . . keeping merchants bookes of accounts by way of Debitor and Creditor. . . . And . . . here is adioyned the practice by an example of the Inventory, Journall, and Lidger," etc.

Largely taken from Hendrick Waninghen.

Bologna (?), 1632. MATTEO MAINARDI. "Scrittura Mercantile."

London, 1636. RICHARD DAFFORNE of Northampton, Accountant. "The Merchants' Mirrour, or Directions for the perfect ordering and keeping of his accounts, Framed by way of

Debitor and Creditor, after the (so tearmed) Italian manner: containing 250 rare questions, with their answers, in forme of a Dialogue. As likewise a Waste Booke, with a compleat Journall and Leager thereunto appertaining . . . and also a Moneth-Booke," etc.

An excellent book describing double entry in its full development.

Palermo, 1636. LODOVICO FLORI. "Trattato del modo di tenere il libro doppio domestico."

Another edition, *Palermo*, 1677.

London, 1652. JOHN COLLINS, Fellow of the Royal Society. "An Introduction to Merchants Accompts, containing seven distinct questions on accompts," etc.

Florence, 1655. BASTIANO VENTURI. "Della scrittura conteggiante di possessioni," etc. Treats of Estate Management and Book-keeping.

Bologna (?), 1666. GIACOMO VENTUROLI. "Scorta di Economia o sia Dialogo di scrittura famigliare."

Another edition. *Bologna*, 1717.

London, 1660. ABRAHAM LISET, Gent. "Amphithalami, or the Accountant's Closet. Being an abridgment of merchant's accounts kept by Debitors and Creditors, exactly and accurately shewing how to order, state, and keep accounts either of a publick Firm, a private Estate, into a single Book, without a memorial, and Journal, or annal; whereby calculation may be made at pleasure of the advance or arrear, gain and loss, of the whole stock and architecture," etc.

Brescia (?), 1671. ANTONIO ZAMBELLI. "Ragionato o sia il trattato della scrittura universale."

Another book by Zambelli, entitled "Mercantesche dichiarazioni della scrittura doppia," dated 1681.

Edinburgh, 1683. ROBERT COLINSON. "Idea Rationaria, or the Perfect Accomptant. Necessary for all merchant and Trafficquers, containing the true forme of Book-keeping according to the Italian methode," etc.

London, 1695. EDWARD HATTON. "The Merchant's Magazine, or Trades Man's Treasury," etc.; and subsequent editions.

London, 1711. ABRAHAM NICHOLAS. "The Young Accomptant's Debitor and Creditor; or, An Introduction to Merchants' Accounts, after the Italian Manner," etc.

Edinburgh, 1718. ALEXANDER MALCOLM. "A New Treatise of Arithmetick and Book-keeping."

London, 1721 (2nd Edit.) WILLIAM WEBSTER. "An Essay on Book-keeping."

London, 1731. ALEXANDER MALCOLM. "A Treatise of Book-keeping; or Merchants' Accounts," etc.

Edinburgh, 1736. JOHN MAIR. "Book-keeping Methodiz'd; or, a Methodical Treatise of Merchant-Accompts," etc., and subsequent editions.

Edinburgh, 1768. JOHN MAIR. "Book-keeping Modernized," etc.; and subsequent editions.

London, 1784. THOMAS DILWORTH. "The Young Book-keeper's Assistant," etc.; and subsequent editions.

Bristol, 1796. EDWARD T. JONES. "Jones's English System of Book-keeping, by Single or Double Entry"; and subsequent editions.

Glasgow, 1798. C. BUCHANAN. "The Writing-master and Accountant's Assistant," etc.

London, 1801. P. KELLY. "The Elements of Book-keeping," etc.

Hawick, 1807. WILLIAM LORRAIN. "Book-keeping by Double Entry," etc.

Glasgow, 1815. C. MORRISON. "A Complete System of Practical Book-keeping applicable to all Kinds of Business," etc.; and subsequent editions.

Leeds, 1820 (3rd Edit.). JAMES MORRISON. "A Complete Treatise on Practical Book-keeping," etc.

London, 1841. A. G. HENDERSON. "Book-keeping by Single and Double Entry," etc.

Edinburgh, 1861. F. HAYNE CARTER. "Practical Book-keeping adapted to Commercial and Judicial Accounting, with Sets of Books and Forms of Accounts"; and subsequent editions.

Oxford, 1868. Sir R. G. C. HAMILTON and JOHN BALL. "Book-keeping"; and subsequent editions.

London, 1893. LAWRENCE R. DICKSEE. "Book-keeping for Accountant Students"; and subsequent editions.

Edinburgh, 1899. GEORGE LISLE. "Accounting in Theory and Practice."

RICHARD BROWN.

Book-keeping: its Adaptability to the Requirements of every class of Undertaking.—Inasmuch as there is in some quarters an impression that book-keeping is a more or less artificial means of recording, in an arbitrary manner, business transactions, it will perhaps not be amiss to devote a few pages to the consideration of book-keeping as a theoretical science, the perfection of which—as a science—is demonstrated by its complete adaptability to every conceivable class of undertaking.

Book-keeping has been variously defined, but for practical purposes it may be said to be the science of recording business transactions so as to provide (1) a convenient and ever-ready record of each separate transaction, and (2) a ready means of gauging the aggregate effect of the transactions as a whole, or of any class of such transactions. The first requirement is easily complied with; it is the second that so often taxes the ingenuity of those upon whom the formulation of any particular system of accounting may devolve. The difficulties are, however, in every case of a practical nature: that is to say, they are due not to any inherent imperfection in the fundamental principles upon which book-keeping is based, but to the fact that it is in all cases desirable to combine completeness and efficiency with simplicity, and thus with clearness of working.

In order to discuss the matter more fully it is necessary to consider the varying nature of the individual transactions that may have to be recorded under any system of accounts. It may be stated in the first place that all business transactions involve the transfer of money, or money's worth; while it may be added that this definition is moreover exhaustive, in that no business transaction involves anything more than this transfer. Each transaction then—for its complete record—must be considered from two points of view: from the point of view of the recipient of the benefit, and from the point of view of the imparter of the benefit. It is upon this elementary fact that all systems of book-keeping, from the simplest to the most complex, are based.

Proceeding further, it may be said that all transactions are capable of being divided into the following classes:—

I. (1) Transactions involving an addition to assets and an equal addition to liabilities.
(2) Transactions involving a reduction of assets and an equal reduction of liabilities.
(3) Transactions involving the substitution of one asset for another of equal value.
(4) Transactions involving the substitution of one liability for another of equal value.
II. (5) Transactions involving the creation or increase of a liability with no corresponding increase of assets.
(6) Transactions involving the creation or increase of an asset with no corresponding increase of liabilities.
(7) Transactions involving the extinction or reduction of a liability with no corresponding reduction in the value of assets.
(8) Transactions involving the extinction or reduction of an asset with no corresponding reduction of the liabilities.

Examples of each of these transactions will readily occur to the reader. It may be mentioned, however, that many transactions that occur in practice are really "compound" in nature—*i.e.* they come partly under one of the first four headings and partly under the second four. Thus the selling of goods at a profit is a combination of (3) and (6), while the selling of goods at a loss is a combination of (3) and (8).

Dealing first with transactions that involve the record of assets and liabilities merely (the first four classes enumerated above), it will be seen that an accurate record can readily be kept by opening an account for each person and each class of property, and debiting each account with every transaction that involves its receiving a benefit, crediting it *per contra* with every benefit that it imparts to another account. By this means the dual nature of each transaction is fully recorded, and at the same time a convenient means of checking the entries is provided, in that every entry

being recorded once upon each side of the ledger (*i.e.* to the Dr. of one account and to the Cr. of another), it follows that (if the entries have been correctly made) the sum of the debits will invariably equal the sum of the credits.

It may be thought that this perfect equipoise of debits and credits can only occur in the event of the assets happening to exactly equal the liabilities, *prima facie* an unlikely occurrence. It is true that it is only under these conditions that the two sides of a ledger can "balance"; but the exact equality of liabilities and assets, so far from being an accidental occurrence of remote probability, is an invariable necessity of the position. The reason for this is that any given set of accounts is not the accounts of the proprietor (or proprietors) of the undertaking, but the accounts of the undertaking itself, regarded as a separate entity. This applies not merely to the accounts of a company, society, association, or firm, but also to the accounts of a private individual. The undertaking, or business, whatever its legal nature, exists, and enters into business transactions for the benefit of its proprietors and is accountable to them for the results achieved. In the case of a company the capital adventured by the shareholders is held by the company in trust for them, and they are treated as creditors for the amounts contributed by them respectively. Whatever profits may be earned are—while as yet undivided—held by the company in trust for them, and are therefore also treated as a liability. Similarly in the case of a firm or private individual, the capital originally contributed stands to the credit of the proprietors in their respective names, and the profits that are earned, being theirs, are credited to them, thus recording that the amount they have invested in the business has been increased; *per contra*, losses and withdrawals are debited, as reducing the amount that the business has to account for to its owners.

In the case of a privately-owned concern the capital of the business is always neither more nor less than the excess of assets over liabilities; if therefore the capital is (as it should be) treated as a liability, it follows that the assets (balances of ledger accounts that are in debit) will at all times equal the liabilities (balances of ledger accounts that are in credit). In the case of companies, etc., the capital of which is (by a legal fiction) supposed to be unalterable, the aggregate profit (or loss) to date is shown in the books as a liability (or asset, as the case may be). Here also, therefore, the sum of the debit balances will always equal the sum of the credit balances.

Passing now on to the second four classes of transactions (5 to 8), in the case of these there is *prima facie* no twofold nature, and the "other half" of the transaction is a profit or a loss. From what has just been stated, however, it follows that these profits or losses are just as capable of double record as any other transaction, in that they increase or reduce *pro tanto* the amount for which the business is accountable to its proprietors. The second half of these transactions might of course be credited (or debited) direct to the proprietors' accounts in each case, but in practice this—for reasons of convenience—is but rarely done.

A balance sheet—or summary of assets and liabilities, periodically extracted from the ledger—discloses the financial position of the undertaking, but it affords no clue as to *how* this position of affairs has come about. It is of great practical importance to show how and why a certain profit or loss has been made, hence it is convenient to classify the individual items of gains and losses.

For this reason "nominal accounts" are opened under suitable headings,

to which are posted all transactions coming under headings (5) to (8); these accounts are periodically focussed into a general profit and loss (or revenue) account, the balance of which shows the aggregate result for the period under review.

In practice, however, it would not infrequently be quite impossible to proceed exactly upon these lines, while in many cases the amount of detailed work involved would make the cost of complete accounting prohibitive. The object of the present article is to show the entire adaptability of theoretical book-keeping to all conceivable requirements in actual practice.

It has already been stated that many transactions are of a compound nature, as, for example, the selling of goods at a profit, which involves the substitution of a book debt for certain stock-in-trade, and the simultaneous creation of an item of profit earned upon the deal. It would be always inconvenient, and often impossible, to separately record each item of profit so earned. Book-keeping raises no imperative demand that this should be done. By treating "goods account" as a separate entity and debiting it with the prime cost of all goods received into stock during the current period, and at the end thereof crediting it with the value of stock unsold, it provides a reliable record of the cost of all goods sold during the period under review. If the total sales are also credited to this account, the resulting credit balance is the gross profit on sales, for which the goods department is accountable to the business.

If it be desired to separate the goods account, so as to show the results of the various trading departments, this can readily be done by opening a separate account for each and analysing the sales, purchases, and stock. In practice the "analysing" would probably take the form of keeping the records separate from the outset, so that no additional labour would be required.

Similarly the results of special consignments, etc., can be readily shown by keeping the transactions relating thereto separate, and posting them to a special ledger account.

The actual double-entry of each separate transaction would hardly ever occur in practice, as involving too much work. Those transactions that were continually occurring would in the first instance be recorded in separate books of first entry, kept for that particular class of transaction; they would be recorded in the ledger in detail so far as they effected a redistribution of assets and liabilities, but so far as they affected nominal accounts they would be recorded in total only, the book of first entry being so framed as to be capable of being added up periodically for that purpose.

This aggregation of items prior to their being posted would naturally vary according to the nature of the undertaking. All classes of transactions occurring sufficiently often to make it worth while would be entered in separate books. Thus separate books of first entry would be employed for sales and purchases (often several for each, so as to keep separate the record of different departments), while often bills receivable and bills payable books could be kept as well.

In almost every business the cash transactions are especially numerous: here the plan is adopted of omitting the book of first entry altogether, and at once making the entry in the ledger account. For convenience, however, the cash account is usually kept in a separate book by itself, called a "cash-book." It is, however, still in substance one of the accounts of the ledger. In practice, journal entries are now only made to record

those transactions which do not occur sufficiently often to make it worth while to devote a special book to their use.

The modern cash-book well illustrates the adaptability of book-keeping to business requirements. In addition to entirely obviating the necessity for any initial record, by separating the account from the general ledger, it affords a good instance of "columnar book-keeping." Where some transactions take place in cash and others through the medium of the bank, it is convenient that the combined effect of all such transactions should be shown upon a single opening. Special columns are therefore provided upon each side for the transactions passing through the office and for those passing through the bank. These are kept entirely distinct, but by being shown in parallel columns upon the same folio their united effect can be more easily traced. If several different bank accounts are kept, they can all be separately shown by the addition of an extra pair of columns for each. If cash discounts are numerous, much work can be saved by adding a "discount" column to each side of the cash-book. This column is in the nature of a journal, for the periodical totals are posted into the ledger; but by adding a discount column to the cash-book the labour of writing each name *twice* is saved. If it is thought undesirable for the cash-book to show the balances in hand and at bank, this can be avoided by posting the totals periodically to ledger accounts, in which case the cash-book again reverts to a book of first entry.

Any book can be subdivided without altering its nature or effect. The convenience of subdividing books of first entry has already been mentioned to some extent; it may be added, however, that it is only by this means that it is possible to permit a large staff to be at work on the books to enable the transactions of a large undertaking to be kept recorded at all. Subdivision also greatly facilitates reference to any separate transaction or account. Subdivision further enables private transactions and private accounts to be kept from the ken of junior book-keepers, and by the adoption of "self-balancing ledgers" (*q.v.*) it greatly facilitates the accurate keeping of the accounts, and minimises the chances of fraud. The subdivision may proceed upon any convenient lines, and thus the requirements of every class of undertaking can be met with equal facility.

Another important point in connection with almost all undertakings is the necessity for a detailed analysis of the transactions, so that the classification of items may proceed upon useful lines. As has already been stated, this can be conveniently performed—up to a certain point—by the provision of separate books of first entry for each class of transaction. For many reasons, however, it is undesirable to unduly multiply the number of different books, while in many cases this would only be practicable at the cost of greatly increasing the amount of work involved. Here, however, the columnar system comes to the rescue. Its applicability to the cash-book has already been explained; it is, however, equally convenient in connection with other books of first entry, and is largely used in connection with day-books (both sold and bought) to analyse the transactions with the various departments.

Where the number of ledger accounts is extremely numerous, a difficulty is often experienced in detecting errors of posting. To a great extent this may be facilitated by subdividing the ledgers, but in some cases an even better method is available. This is the employment of Tabular Ledgers (*q.v.*).

Tabular ledgers are especially convenient (*a*) where the individual accounts contain little or no detail (*e.g.* short accounts, accounts for rates,

etc.), or (*b*) where the ledger accounts contain an enormous amount of detail (*e.g.* in hotel accounts). In each case the employment of day-books is to a very large extent—if not entirely—obviated, so that the additional complexity of the ledger is partly compensated for by the abolition of a large amount of other work. Tabular book-keeping is unquestionably one of the most useful developments of modern book-keeping that exists, and its advantages might be very much more extensively utilised than is at present the custom. It minimises the risks of error by avoiding the repetition of entries, and by making every folio of the ledger distinctly self-balancing, while at the same time very materially reducing the number of books required.

Another very important development of modern book-keeping that is less generally employed than it deserves is the "slip system," or "card system." A full description of this system would be out of place in the present article, but a brief indication of its nature may not be amiss. Shortly, then, the underlying principle is that for many purposes it is convenient to record the initial entry of transactions upon detached "cards," "slips," or "cheques," instead of in bound-up books, these moveable slips being passed on from one clerk to another, so that each may make his entries from the *original record*. Examples of this system in general use are to be found *inter alia* in all banks and hotels. In banks the customers' ledgers are posted up, not from the cash-books, but from the original cheques and paying-in slips received by the cashiers; they thus afford a complete check upon the accuracy of the entries made by the latter, and at the same time avoid the necessity of the cash-books being taken out of the cashiers' hands and handed over to the ledger clerks for posting purposes. The latter convenience is a most important one. In the same way in a large trading concern, where there are numerous day-books in use in each of the several departments, from each of which postings may have to be made to any or every ledger, the slip system is invaluable. In the case of hotels the slip system is employed for recording the serving of intoxicants. The orders are made out by the waiters in counterfoil slip-books, the slip is passed on to the cellarman, who supplies the goods ordered and records the entry in his cellar stock-book; once (or oftener) a day these slips are sent up to the book-keeper, and form the authority for his debits to the visitors in the tabular ledger. Should a slip be lost or mislaid, reference can be made to its counterfoil, but as a rule it is not necessary to trouble the waiter.

In an article of this description it is of necessity imperative to keep to generalities, but enough has been said to show that every conceivable class of business transaction can be recorded according to the rules of double-entry book-keeping, and further that these rules are founded upon such sound fundamental principles that they impose no difficulty upon the introduction of modern labour-saving devices. Double-entry is reputed to have been invented in 1495, and from that time onwards its principles —perfect in themselves—have remained unaltered and unalterable. On the other hand, the practical application of principles has been enormously developed of recent years—especially during the last two decades—and there seems no reason to suppose that anything like finality has yet been achieved. Business methods change and develop, and further facilities for their due record become imperative. It is the fact that such improvements have been made from time to time to meet latter-day requirements that proves the adaptability of book-keeping to the requirements of every class of undertaking.

LAWRENCE R. DICKSEE.

Bottomry, Loan on.—A bottomry bill or bond is a contract in writing under which a lender advances money on the security of a ship, on condition that in the event of the ship escaping disaster at sea, or from enemies or pirates, he receives back his money with interest on the completion of the voyage. Should the ship be lost, or fall into the hands of enemies or pirates, the borrower is released from all his obligations. It was used not only to supply the ship-owner with capital, but as a policy of insurance against loss at sea. This form of contract is a very inadequate one, and is now practically obsolete.

"Bought and Sold" Notes.—Bought and sold notes are the records of a transaction which a broker who has carried out the transaction on behalf of one or both parties sends to the principals. The record which he sends to the purchaser is called the bought note, and that which he sends to the seller the sold note.

There are three varieties of bought and sold notes.

(1) "Sold for you to C. D.," or "Bought for you from A. B." Each note would be signed by the broker, adding "Broker" after his signature. This form is of importance from the fact that as the principals are disclosed the broker cannot be sued or sue on such a contract.

(2) "Sold for you," or "Bought for you." The broker would sign the note in this case also, and add "Broker" after his signature. In this case he would not be liable to be sued or be capable of suing, as he has signed as broker.

(3) "Sold to you by me," or "Bought of you by me." This is signed by the broker, without adding the word "Broker." In this case the broker has assumed the position of principal, and is therefore liable as a principal.

Bourse.—The French term for the meeting of bankers and merchants for the transaction of business, and for the place itself in which such meetings are held. The French Bourse de Commerce is the meeting of merchants, masters of vessels, stock and bill brokers, and merchandise brokers, held under the authority of the Government (*Code de Commerce*, par. 71).

B/P.—Contraction for Bill Payable.

B/R.—Contraction for Bill Receivable.

Branch Book-keeping.—Where a business has branch offices or establishments, it is usually advisable that the book-keeping should be such that the branch books can be brought to a correct balance, and that the head office, from statements supplied to them of the transactions which have taken place in the branch office, can incorporate these transactions in the head office books, and thus be able to prepare a statement of the working of the business as a whole and also as separate establishments. It is the purpose of this article to show how this result can be arrived at, and for purposes of illustration it is assumed that there is only one "branch office."

Suppose that this "branch office" has been opened by the "head office" supplying so much goods and cash to the "branch office," thus enabling it to commence business.

The books of the branch office will be the ordinary books required for a

merchant's business, and may consist of an invoice book, day book, returns books, cash book, and ledgers. It will be of advantage to have the invoice book ruled so as to show goods received from the head office, if these are numerous, and purchases from other persons. The returns outwards book might also with advantage be similarly ruled so as to show returns to the head office and returns to other persons. The working of these books into one another has already been treated elsewhere (see "BOOK-KEEPING"), and it is mainly the recording of the transactions which the branch office has with the head office and their treatment in both sets of books that will be treated of here. The other transactions are treated in the ordinary way in the books above mentioned, and call for no further comment.

At the outset it may be mentioned that in the ledger of the head office an account will be opened headed Branch Office, while in the ledger of the branch office an account will be opened headed Head Office.

It will be of advantage to take a few transactions of a simple nature and trace how these would be recorded in the branch books.

Opening Entries in Branch Books.—In the case supposed, namely that of opening a branch office and supplying cash and goods from the head office, these transactions will require to be recorded in the branch office cash book and invoice book. From these books the amounts would be posted to the credit of the account in the ledger headed Head Office.

The head office is looked upon as an outside party so far as the branch is concerned, and the result of these opening transactions is that the branch office is a debtor of the head office for the amount of goods and cash supplied, or, in other words, the branch office records in their books that the head office is their creditor to the amount of goods and cash.

Goods supplied by Head Office to Branch Office during year.—These will be entered in the invoice book, and from thence posted to the credit of the Head Office Account. An invoice will be received with the goods, and these invoices are filed. At the end of a month the head office usually renders a statement of goods supplied during the month, which must agree with the invoices sent. The branch office may simply enter in their invoice book the monthly total as brought out in the statement rendered, or they may enter each item by itself on the day it was received; the latter method, although entailing more labour, is to be preferred for various reasons. Goods returned to head office will be entered in the returns outwards book and posted to the debit of the Head Office Account.

Accounts due to the Branch Office by their Customers, but paid by Customers to Head Office.—All such receipts by the head office must be notified to the branch office, who in this case would make a journal entry debiting the Head Office Account and crediting the customer.

Accounts due by the Branch Office to Creditors, but paid by Head Office, would be recorded in the branch books by debiting the creditor and crediting the Head Office Account after getting the notification from the head office.

Expenses paid by Head Office, but chargeable to Branch Office, would be recorded in branch books by means of a journal entry debiting the various charges accounts and crediting the Head Office Account.

It is usual for the head office to render a Monthly or Weekly Cash Statement showing the cash transactions on behalf of branch office, and the journal entries referred to above would be made from this.

Transactions such as those given above would take place during the year, and the recording in the branch books would be done as stated.

These transactions recorded in the head office books call for no special explanation, as all branch transactions go through the Branch Office Account, which is written up from the other books.

There is, however, one point which should be noted, and that is the treatment in the head office books of goods supplied to the branch office. These should not be entered among the ordinary sales, but should be kept quite separate and the total deducted from the purchases (where the goods are invoiced to the branch at cost price) at the end of each period. If these goods were entered among the ordinary sales, the effect would be to swell the sales by that amount, and as these goods would be sold by the branch, they would also appear as sales in *their* books.

Assuming that the trading has gone on for a year, during which period the head office have sent statements of the cash, goods, etc., they have dealt in affecting the branch office, and that the branch office on the other hand has transmitted statements of their transactions as affecting the head office, these statements being duly recorded in both sets of books as above detailed, it is quite evident that in the branch office books there will be a balance on the Head Office Account corresponding to the balance on the Branch Office Account in the head office books, but on opposite sides. If the balance be a debit balance in the branch office books, the balance will be a credit balance in the head office books.

It has been assumed that the branch office referred to above is carrying on business as if it were another business altogether, incurring liabilities on its own behalf and selling goods to its own customers.

In some cases, however, the branch office merely acts as an agent for the head office, and the goods, etc., might all be supplied from the head office. In such a case the branch office transmits a copy of all transactions which it has had, and these are settled through the head office and recorded in its books, the accounts being settled there.

Assuming that the branch office has arrived at the end of the financial year, and that the books have been brought to a correct balance, a trial balance would be taken off. In this trial balance would appear such debit items as rent, wages, insurance, discount, water and gas, and customers' balances; and such credit items as sales, commissions, and creditors' balances. There would also appear the debit or credit balance on the Head Office Account.

A copy of this trial balance would be transmitted to the head office, together with a copy of the Head Office Account, and if it is found that the balance on the Head Office Account in such trial balance agrees with the balance on the Branch Office Account in the head office books, the book-keeper of the branch office will be instructed to carry all the profit and loss accounts in his books to the debit or credit of the Head Office Account. This will be done if it is not desirable to have a Profit and Loss Account in the branch books. If a Profit and Loss Account is to be prepared, the balance on that account would be transferred to the Head Office Account. The reason for this is obvious. The debit balances on the Profit and Loss Accounts are charges which have been incurred on behalf of the proprietor, while the credit balances on Profit and Loss Accounts are gains which belong to the proprietor whose account is kept at the head office. Such being the case, the charges or losses are transferred to the debit of the Head Office Account, while the gains are credited thereto.

The stock sheets should be transmitted to the head office, and the amount of stock does not require to be passed through the branch office books if no Profit and Loss Account is to be prepared therein.

After the book-keeper of the branch has done this, it is obvious that if a balance is struck the figures in such balance will be assets and liabilities, and the difference between these assets and liabilities will appear as a debit or credit balance on the Head Office Account, according as the liabilities exceed the assets or the assets exceed the liabilities. The balance on the Head Office Account will show, if a debit balance, that the head office is due the amount to the branch office, or, if a credit balance, the amount due by the branch office to the head office, or the capital sunk in the branch office exclusive of stock where no Profit and Loss Account appears in the branch office books.

The books of the branch have thus been balanced, and are ready to start the next financial year with.

The method employed by the head office of recording and showing what profit or loss has been made on the working of the branch will now be explained.

When the trial balance of the branch office is received by the head office the book-keeper posts all the debit items which relate to charges or losses to the credit of the Branch Office Account, for the reason that the head office is liable for these charges to the branch office. The book-keeper then debits the Branch Profit and Loss Account with these charges. The credit items in the trial balance relating to gains are posted to the debit of the Branch Office Account, as the branch office is liable for these gains. From the debit of the Branch Office Account these gains are posted to the credit of the Branch Profit and Loss Account.

The balance now in the head office books on the Branch Office Account will be exactly the same as that in the branch office books on the Head Office Account, but on the opposite side; and the book-keeper at the head office, if he has not already obtained a copy of the balance of the branch office books, may construct one himself which will be exactly similar to the one prepared by the branch office.

The branch Profit and Loss Account in the head office books will now be squared off and carried to a general Profit and Loss Account, the balance of which in the case of a private individual or partnership will be carried to the Capital Account in the usual way.

The following statements show exactly how the various closing items work out:—

I. Branch Office

1. *Trial Balance of Branch Office.*

(Before squaring off Profit and Loss Accounts.)

Cash	£200 0 0	
Purchases	3000 0 0	
Sales		£4000 0 0
Wages and Salaries	300 0 0	
Rent and Taxes	150 0 0	
Discount		50 0 0
Customers	1550 0 0	
Creditors		850 0 0
Bank	300 0 0	
Commissions		100 0 0
Head Office Account		500 0 0
	£5500 0 0	£5500 0 0

2. *Head Office Account in Branch Books.*

(After carrying in Profit and Loss Accounts.)

By Balance as above						£500	0	0
To Purchases			£3000	0	0			
By Sales						4000	0	0
To Wages			300	0	0			
,, Rent and Taxes			150	0	0			
By Discount						50	0	0
,, Commissions						100	0	0
To Balance			1200	0	0			
			£4650	0	0	£4650	0	0
By Balance						£1200	0	0

3. *Balance in Branch Books.*

Cash	£200	0	0			
Customers	1550	0	0			
Creditors				£850	0	0
Bank	300	0	0			
Head Office				1200	0	0
	£2050	0	0	£2050	0	0

II. Head Office.

1. *Trial Balance of Head Office.*

(Before receiving Trial Balance of Branch Office.)

Cash	£400	0	0			
Purchases	6,000	0	0			
Sales				£10,000	0	0
Wages and Salaries	800	0	0			
Rent and Taxes	300	0	0			
Discount	80	0	0			
Charges	120	0	0			
Capital				8,000	0	0
Customers	9,400	0	0			
Creditors				300	0	0
Bank	700	0	0			
Branch Office	500	0	0			
	£18,300	0	0	£18,300	0	0

2. *Branch Office Account in Head Office Books.*

(After carrying in Profit and Loss Accounts from Branch Trial Balance.)

To Balance as above				£500	0	0		
By Purchases to Branch	Profit and Loss						£3000	0	0
To Sales	do.			4000	0	0			
By Wages and Salaries	do.						300	0	0
,, Rent and Taxes	do.						150	0	0
To Discount	do.			50	0	0			
,, Commissions	do.			100	0	0			
By Balance							1200	0	0
				£4650	0	0	£4650	0	0
To Balance				£1200	0	0			

3. *Head Office Profit and Loss Account.*

To Purchases		£6,000	0	0	By Sales	£10,000	0	0
,, Wages and Salaries		800	0	0	,, Stock Account (stock on hand)	3,000	0	0
,, Rent and Taxes		300	0	0				
,, Discount		80	0	0				
,, Charges		120	0	0				
,, General Profit and Loss Account		5,700	0	0				
		£13,000	0	0		£13,000	0	0

4. *Branch Office Profit and Loss Account.*
(As appearing in Head Office Books.)

To Purchases	£3000	0	0	By Sales	£4000	0	0
,, Wages and Salaries	300	0	0	,, Discount	50	0	0
,, Rent and Taxes	150	0	0	,, Commissions	100	0	0
,, General Profit and Loss Account	1000	0	0	,, Stock Account (stock at Branch Office)	300	0	0
	£4450	0	0		£4450	0	0

5. *General Profit and Loss Account.*

To Capital	£6700	0	0	By Profit from Head Office Profit and Loss	£5700	0	0
				,, Profit from Branch Office Profit and Loss	1000	0	0
	£6700	0	0		£6700	0	0

6. *General Balance Sheet.*

Assets.					*Liabilities.*				
Due by Customers :—					Due to Creditors :—				
Head Office	£9400	0	0		Head Office	£300	0	0	
Branch Office	1550	0	0		Branch Office	850	0	0	
				£10,950 0 0					£1,150 0 0
Stock on hand :—					Capital				14,700 0 0
Head Office	£3000	0	0						
Branch Office	300	0	0						
				3,300 0 0					
Bank :—									
Head Office	£700	0	0						
Branch Office	300	0	0						
				1,000 0 0					
Cash on hand :—									
Head Office	£400	0	0						
Branch Office	200	0	0						
				600 0 0					
				£15,850 0 0					£15,850 0 0

In the above balance sheet it will be observed that the debit and credit balances of £1200 on the Branch Office Account and Head Office Account do not appear. These balances simply represent what the one office is due to the other, and it is evident that in a general balance sheet of the two concerns it is unnecessary to show this both as an asset and liability. In the above balance sheet, instead of entering the separate assets and liabilities

of the branch, the same result would have been obtained by putting as an asset £1200 as due by the branch. As, however, the purpose of the general balance sheet is to show the exact position, it is necessary to put in the particulars of this £1200 which is shown in the balance of the branch office.

From the foregoing it will be seen that the books of both the head office and the branch office are ready to begin the next year with, and the same routine would be gone through in that year.

The accounts of foreign branches in the home books are incorporated in a similar way, special attention being paid to the conversion of the foreign branch transactions (which are in foreign money) into sterling money. In many businesses the Branch Office Account in the home office books is so ruled that the balance in foreign money and in sterling can be obtained at any time.

Brewery Accounts and Account-Books.—A brewer's accounts may be said to be at once the easiest and the most difficult, the simplest and most complicated of all traders' accounts. They are easy in this respect, that the calculation of invoice-prices is quite mechanical, and might almost indeed be performed by a carefully constructed machine—at least so one is tempted to imagine. The standard prices for pale ale, for example, or what is popularly called bitter beer, are 60s., 54s., and 48s. per barrel of 36 gallons. If half-barrels (kilderkins) are sent out, the price is simply one-half of these; if hogsheads (54 gallons), the price is one and a half times these prices, that is, 90s., 81s., and 72s. Generally the prices for porter and stout correspond to the above, or, if lower qualities are made, the price is made an easy one for calculation, say 42s., 36s., or 28s. per barrel. So it is with prices of mild (or sweet) ale and table beer. The question naturally suggests itself to the reader, How do brewers manage to fix their prices in this easy mechanical way, and do they all meet together once a month for the purpose of discussing prices? The answer is that the discount allowed is the real criterion, and it is the discount which the brewer has to watch with the utmost care. There is always a tendency on the part of the customer to demand more and more discount, or to deduct odd shillings—and even pounds—and in small accounts this may mean five per cent or even more. In the preparation of invoices, however, and the writing-up of day-books no great skill is required, but only moderate ability and simple attention. Many brewers do not, for this reason, require the clerk who writes up the day-book to extend the prices at all; this is done when the ledger-clerk writes up his journal, in which he groups and summarises the accounts, checking his calculations by reference to the invoices sent to agents and others by the forwarding clerk, and by other simple devices. Once the accounts are thus grouped and summarised in the journal under, let us say, the various agencies or branches of the business—including amongst these the group of customers called on by each traveller—the work of posting becomes simple and may be effected rapidly; the details are posted to the various town or country customers in the town and country ledgers, and the summaries go into the general ledger. By this means the general ledger can be balanced within an hour or two at the end of every quarter or every month, if necessary, and it checks and is checked by the grouped accounts in the town and country ledgers, and by the ledgers kept for the agencies and branches.

The same simplicity of procedure is observed in freight accounts. Railway companies do not weigh brewers' casks, they simply count them

An average weight is taken as the basis of calculation, and very often quite a round figure is adopted to facilitate this, as, for example, 6 cwt. for a hogshead, 4 cwt. for a barrel, and 2 cwt. for a kilderkin; this may be slightly below the average weight, but the simplification of calculations thereby achieved compensates the railway companies very largely for the slight loss of revenue; probably they save it in salaries. At any rate, when such an arrangement can be made, the benefit to the brewer is immense; when once the freight account has been compared with the receipt-books as signed by the railway carters the work of checking charges goes on very rapidly.

Debits are thus seen to be comparatively simple matters, and credits can be simplified also. In most brewers' offices each traveller has his own cash-book, with three columns, in which he enters all the cash he receives. In one column he enters the nett cash, in another the discount, and in a third the gross amount. These nett sums are entered in a slump each day by the cashier in the brewery cash-book, and thence posted into the general ledger to the traveller's summary account; the *gross* sums are entered in detail by the ledger-clerk to the credit of the various customers, with a jotting in an inner column of the discount allowed—this for purposes of reference only. At the end of the month the total discount is posted to the credit of the traveller's summary account in the general ledger in one sum; thus the general ledger's two sets of entries (nett cash and discount) are checked by the town or country ledger's groups of accounts, and *vice versa*, so that a mistake in an addition, for instance, cannot escape detection. Further, no payment made to the cashier, and credited by him to a traveller's group, can escape appearing in that traveller's cash-book, otherwise accounts would not balance. This is a satisfaction to the traveller paid wholly or partly by commission on cash collected; even if one of his customers should pay direct to the office, the sum *must* appear in his own cash-book.

The question of discounts, as will be now quite apparent to the reader, is a very difficult and distracting one in a brewer's office. Gross prices are easily fixed and may mean very little; the sliding scale is applied in the form of discount. Attempts have been made from time to time to arrange a fixed rate of discounts, but they have nearly always been failures; some member of the trade plays false by giving better quality at the old price, or by making "allowances," as he calls them, for imaginary grievances, or by permitting the retailer to return ale at random, perhaps diluted or mixed, and crediting him full price. When it is said that the brewer's price is fixed by the discount he allows, it will be understood that in dealing with this question we are simply face to face with the ordinary economic question of supply and demand in another form; that the retailer is ever on the alert to obtain better and better terms from the manufacturer, and that the manufacturer is equally anxious to checkmate him and curtail his demands. The honest brewer, like every other honest trader, knows that when prices go below a certain point he ceases to make a profit: if he is a strong man financially he waits till the retailer comes to his senses; if he is a weak man he tries to cajole his customers. It has happened before now that a great and wealthy firm or group of firms has withdrawn from the contest till the weaker combatants had exhausted each other. Prices had gone down and down—but so had the quality; then the retailer awoke to the fact, and, not remembering that he had been asleep, went back to the great houses that had formerly supplied him, full of animosity against the little houses whom he had really victimised and perhaps slain. This is not the place, nor is the present writer qualified, to discuss great economic truths and theories, but much mental confusion has arisen with regard to brewers' dis-

counts, and it is necessary to put the matter in a clear light, if only for a moment.

There is undoubtedly a practical difficulty connected with the settlement of price by discount. There is sometimes a temptation on the part of agents and travellers to overstate discounts allowed to customers, in order to cover travelling and other expenses. Let us suppose that discounts have shown a tendency to rise from 30 per cent, at which they have stood for a time, to 32½ or even 35 per cent. There will always be a certain number of customers content with the old limit, but it is difficult to say who they are; only the agent or traveller knows this, and as brewers rarely allow discounts to be shown on discharged accounts, from a feeling of uncertainty as to their neighbours' action, a door is left open for falsification. The danger is not so great as it seems, therefore let the auditor sleep in peace. Payments are most frequently made by cheque, even the humblest retailer having his bank account, at any rate in Scotland; consequently the weak or dishonest agent has ever the dread before him of being, in case of dispute, faced with the damning evidence of the bank document—evidence which he may find it difficult to explain away. Collusion between agent and customer is still less likely; it is, besides, dangerous, as one can never tell what an angry customer may say at any time. On the whole that brewer does best who treats his employees generously and makes them regard strictness and exactitude a point of honour. He must, of course, keep a watchful eye on the barometer, that is, the discount column, and insist on explanation of all abnormalities and divagations, but apart from this he need not trouble himself too much.

It would be superfluous in this article to treat of the minor books of a brewery, such as stock-books, cash-books, draymen's receipt-books, wages-books. These do not differ essentially from the minor books kept by other manufacturers; they follow the fancy or the caprice of the individual brewer, and they could easily be "evolved" by any competent business man..

It is when the brewer wishes to know the exact cost of production of every quality of liquor that he manufactures that he finds himself in a great difficulty. He may keep most elaborate statements showing his purchases of barley and hops, his ledger and his cash-book account for every penny received or paid away, his brew-house journal may be a model of fulness and accuracy of detail, and yet he cannot arrive at the exact cost of any one brewing. He can only go upon the doctrine of averages and trust to general truths. We do not here speak of the peculiar risks which the brewer has to run, and which exceed those of many other traders. Every man who has acquired even the rudiments of science, almost every man who has paid a visit to a brewery and heard the brewer explain popularly the process of manufacture, will readily understand that brewing is a risky and uncertain business. Beer has been somewhat neatly described in popular language as "the essence of barley on the verge of decomposition," and if this may not be scientifically satisfactory, it suffices at least to indicate the troubles and worries to which the brewer is exposed. He depends upon the weather, just as the farmer does; his fermenting and other vessels are exposed to the attacks of disease, just as cattle and sheep are; his products are of the most delicate constitution, and he has to watch them night and day; he is kept as anxious as the doctor who sits with watch and thermometer in hand at the bedside of a fevered and restless patient. The difficulties to be dealt with in these pages are purely the financial, and we now proceed to state them. "What does it cost me," says

the brewer, "to put a brewing of pale ale at 54s. a barrel on my warehouse floor ready for despatch? Once I know that, the rest is easy; railway and steamer freights seldom change; discounts I can regulate, and so also commissions and salaries, but how am I so to distribute costs that I can tell exactly what each brewing costs?" This is the question, and we must try to indicate a solution.

It is a good plan to commence with the account which is commonly called Charges on Trade, and to scrutinise it carefully. If any charge appears in this account which is not general—if, for instance, a charge in connection with a particular agency, a special charge not likely to recur (such, let us hope, as litigation expenses), or a charge for renewal of plant has crept into this account—it must be extracted: in the first instance the charge must be reserved for computation when dealing with the agency; in the second and third cases a calculation must be made of the amount of the charge really applicable to the year under examination. A note of the balance must of course be made, in order that succeeding years may bear their fair share of the burden, otherwise calculations may become vitiated.

Casks form a serious element in all brewery work. They are expensive, and bear a heavy proportion to the value of their contents when full—sometimes 100 per cent. Yet, practically, they are never charged to customers, and are comparatively seldom lost or destroyed except in very distant parts of the country: the reason is, that retailers have been drilled by unpleasant experience in the past, either on the part of themselves or their ancestors and predecessors, and take the utmost care to return all empties and keep full notes of numbers and sizes for reference in case of dispute; further, carriers, railway men, and cask collectors have everywhere organised the service of collecting and returning casks to brewers. Still, casks do go mysteriously astray and cannot be traced, or they become old and are not worth repair, or they become incurably tainted and are no longer suitable for the brewer's purpose: in the two latter cases they have to be broken up, or, if not too far gone, sold at a fraction of their original cost for holding chemicals. In making his yearly calculations as to cost, the brewer therefore takes the nett amount of his cask account—that is, the difference between the sums paid by him for repairing-material (wood and iron) and the sums obtained by him for the sale of old casks. The charge for new casks purchased by him will, of course, appear in this account, and therefore the nett balance we have spoken about must be corrected by adding thereto or deducting therefrom the difference between the stock of casks at the end of the year under examination and the stock at the end of the preceding year. The sum now left will show the legitimate charge for wear and tear. Coopers' wages appear under the ordinary wages account.

The charges under horse account come under our present scrutiny only as far as the horses are employed for haulage of coal, etc., for use in the brewery.

If the brewer is his own maltster he must take into his calculations all sums paid for coke, etc. If he purchases additional malt he must charge to general expenses a sum representing the charge made by maltsters for converting barley into malt—but nothing more—on all quantities of malt purchased by him.

Under the heading of salaries and wages no sums should be included which are paid to travellers or agents on the one hand, or to draymen and carters employed to deliver ale in the town where the brewery is situated, or in the neighbourhood, on the other. These charges really commence

only *after* the ale has been laid down on the warehouse floor. Of course, here also, an element of uncertainty exists. The draymen may on a slack day be employed in the cellars or in driving goods to a steamer for shipment to an agency, whereby freights are reduced, but the reduction may be overlooked in the general calculation. The brewer must be content with averages.

Charges for rent and interest on capital, if the brewery is a private concern, and for interest on debentures and payment of preference charges if the concern is a limited company, may be adjusted by an accountant: they are merely matters of arithmetical calculation.

To the credit of general charges the brewer must place all sums obtained by him for waste products, such as draff and yeast.

Having then gone through all the accounts in his ledger as we have suggested, and taken all his outlays into general purview, the brewer divides the total nett debit by the number of barrels laid upon his warehouse floor during the year, and the result is the general charge per barrel for the year. Of course the careful reader will observe that here, as elsewhere, increased output may diminish the rate of charge per barrel: wages need not increase at the same ratio as the output, nor rent nor taxes; the extra wear and tear of casks and machinery need not be very great, and even the extra quantity of coal consumed need not be quite double for double the amount of ale produced. It is therefore desirable, from the point of view of pure economics, to work machinery to the full extent; and so it often occurs that brewers accept offers of business at a low rate of prices—for a distant market at home or abroad—to fill up, so to speak, their spare time. If the prices they get in the ordinary market are such as to leave a good profit after paying expenses they may, to a large extent, ignore these "general charges" in calculating prices for foreign markets; or conversely, if they find that after debiting the goods for the foreign market with full charges there is little profit shown, or none at all, they know that the profit on home goods will be greatly increased.

Even when he has arrived at a vague general notion of expenses the brewer is only a short way towards the solution of his problem. There is the question of the malt which he uses. Now malt is barley which has gone through several processes which it is not our province to describe; suffice it to say, that we have made adequate provision for the expense of conversion. The brewer knows what he has paid for his barley, but then he has bought a variety of qualities—French, Algerian, Egyptian, Smyrna, Black Sea, together with heavy barley of English or Scottish growth—and he mixes these in due proportions in his various brewings. But it is almost impossible to do more than take the average price that his barley has cost him, for it must further be remembered that the prices, say, for French barley vary in the course of a season. He resolves, for the sake of simplicity, to take the average price paid for his barley. But then another difficulty presents itself: he has bought that barley practically by *weight;* he instructs his foreman to put into the mash-tun a *measured* quantity of *malt* —so many bushels to the brewing. In other words, when he bought 1000 quarters (8000 bushels) of Algerian barley he stipulated that this barley should be "weighed up" to 448 lbs. per quarter, which means that if the natural weight of the barley was only 400 lbs. per quarter he got 48 lbs. of barley thrown into the bargain for each quarter, which is about a bushel. Still, the transaction appears in the merchant's invoice and the brewer's ledger as 1000 quarters. Then again, malt is much bulkier than barley, and the further question arises, How much barley is represented by

a bushel of malt? To solve this difficulty, or rather these two difficulties, in a somewhat rough and ready way, the brewer takes, let us say, for a brewing of ale 15 quarters of measured malt at the average price of his barley, and deducts 10 per cent from the result, and thus he arrives tolerably close to the cost of one part of his material.

Hops do not present such a difficult problem. The brewer uses different kinds of hops—English, German, and American—and mixes these according to circumstances. It would doubtless be possible, especially in a very large brewery where different qualities are brewed in separate establishments, to calculate the average price of each kind of hops, and, taking the number of pounds of each used in a brewing of ale, come pretty near the exact cost under this heading; but even then it must be remembered that the quantity of hops used varies according to the season of the year, and that prices have varied also.

The cost of water-supply, if from the town mains, will be found in one or other of the ledger accounts; if from the brewer's own well, a yearly charge may be made up by taking a percentage on the cost of the well.

The Government duty bulks very largely in brewers' calculations. It is determined by the strength of the liquor, and is at present (1902) 7s. 9d. per standard barrel. The formula is simple: the officer takes the number of barrels (36 gallons) in the fermenting tun, allows 6 per cent for wastage, and multiplies the remainder by the gravity of the liquor as determined by the hydrometer; this he divides by 55, and so finds the number of barrels on which duty is to be charged.

One other point may be mentioned before leaving cost of production. A brewer may find that he can make a second or after-brewing of cheaper liquor, such as table beer or light porter, after a brewing of strong ale or stout. He must in that case take care to debit each quality with a due share of the cost of production, otherwise the cheaper liquor may not bear its proper burden. The best plan is to put into his calculation the materials, duty, and general charges which apply to both, then take the number of barrels of each quality produced, multiply these by their gravity, and so find the proportional values of both qualities.

When the brewer has thus arrived, more or less accurately, at the cost of production, his calculations become simplified. He has to send ale to a certain part of the country at a certain nominal price: all he has now to do is to add the charge for freight, if the ale has to be delivered carriage free at the other end, and in any case the charge for the return of empty casks, and to deduct from the nominal price to be obtained the discount, plus a percentage for returned ale and for possible bad debts, and then he can see whether the transaction is likely to turn out profitable or the reverse. If he has to quote a price for a foreign market free on board at the nearest port, or cost, freight, and insurance (*c.i.f.*) at the foreign port, he has to keep in mind, on the one hand, that duty may be omitted, as it will be all practically returned to him on shipment of the goods; and, on the other hand, that casks must be charged, as they will not come back. Freight charges are a very serious consideration to a brewer. His goods are very bulky and very heavy in proportion to value, and a difference of 10s. per ton may decide against his chance of competition in any market. The present writer remembers a case in which a Newcastle brewer declared that he could not afford to supply a theatre bar of his own at Birmingham; in other words, it was cheaper to buy his supplies of ale on the spot. Thus, brewing tends to become more and more of a local industry. Brewers must acquire all the available local outlets and prevent the intrusion of strangers, but

they can do this permanently only by contenting themselves with moderate profits and supplying the public with good liquor.

C. D. CAMPBELL.

Broker.—A broker is one who brings buyers and sellers together by acting as an intermediary. As a rule, brokers are under the rules of corporate bodies of which they are members, and to whose regulations they must conform upon pain of expulsion. There are brokers in connection with almost every wholesale trade, and their method of working varies considerably, some being practically warehousemen, whilst others are merely agents paid by a fee.

A stockbroker may either be a member of one of the Stock Exchanges, when he has to conform to the rules of the Stock Exchange of which he is a member, or he may be an outside broker, that is, one not a member of a Stock Exchange. On the Stock Exchange no one is allowed to deal, or practically even to enter the Exchange, who is not a member.

Brokerage is the charge made by brokers in connection with the purchase or sale of securities or other assets.

Bucket Shop is the term applied to the offices of people in London known as "outside brokers," that is, persons who are not members of the Stock Exchange.

Budget, National. *See* NATIONAL BUDGET.

Builders' Accounts.

THERE are few trades, taken as a whole, at the present day, in which the book-keeping is in such an unsatisfactory condition as the building trade. Perhaps this is to be expected from the men mainly concerned in the business, and yet could the builder but realise the value of proper, correct, and adequate accounting, it would go far towards reducing the number of failures in the trade, and thus remove "builders" from their present unenviable position in the bankruptcy returns.

It cannot, of course, be denied that the business is a highly speculative one, but precautions can be, and in a few instances are, taken to reduce the element of risk. Thus one builder, in drawing up a tender, goes into the estimated cost of each section, aye, and each portion of each section of the work. He turns up his books for information as to the cost of similar jobs he has had in hand. He thus arrives at his estimate in detail, and in many cases to a large extent from actual past experience; but he is not content with this. In the event of his tender being accepted, he checks and compares his actual costs as the work goes on with his estimated costs. It is needless to point out the many advantages such information gives the builder over his competitor who blunders along in the dark, living in hopes of making a lucky hit and coming out on the right side. Yet the great majority of builders draw up their tenders and keep their accounts on what may be termed the "lucky shot basis." What does it all amount to? The minority are conducting their affairs on a business-like basis, and act on reliable data; the majority are simply engaged in a huge gamble, which

will be more or less successful according to the technical skill of the principals.

The special feature in properly kept builders' accounts is the position occupied by the cost books in recording the transactions. In all other businesses where cost accounts are introduced they are more or less subservient to the ordinary books of account. The costing accounts of a builder, however, take a prominent place in the financial records, and indeed form an integral part thereof. Without his cost accounts a builder is lost. He is simply plunging on from one job to another, hoping that things will come out all right in the end. Occasionally one hears of builders taking up new contracts all round—plenty of successful tendering, lots of work. The uninitiated construes this to mean that the principal is a successful builder, that he is bounding on to commercial success. So perhaps it does in one or two instances, but not in the majority of cases. The correct construction generally is that the builder is in financial difficulties, that he must get new contracts at almost any price, in order that he may draw on these as the work goes on to meet the more pressing claims of his creditors, and that he must, unless the unforeseen occurs, ultimately suspend payment. So much for bad book-keeping, with its consequent faulty tendering.

The books and accounts which a builder should keep will depend upon the operations on which he is engaged and the magnitude of his turnover, In every case, however, it will be necessary to keep the following books:[1]—

PRIMARY BOOKS.—*Cash Book.*—The cash book presents no special feature, and the ordinary form will suffice. It is advisable, however, to avoid double posting from this book. That is to say, items should not, if possible, be charged direct to a contract, but passed through the purchase journal to the credit of a personal account. Where the cash is posted direct from the cash book to the contract and jobbing ledger, the second posting must be made to the adjustment account in the general ledger. The danger of one of these double postings being missed is obvious, with the ultimate trouble of searching for the difference when balancing. Double posting should therefore, where possible, be avoided.

Purchase Journal (Credit Journal or Credit Book).—This is a columnar book, the headings of the columns, in which the various purchases, etc., are analysed, being adapted to the particular business. The items are debited in the contract, etc. ledger, and also (in total) to the adjustment account in the general ledger. The objection of double posting, referred to above, does not arise here, as details are dealt with in the one posting and totals in the other. Of course, in addition to this, the usual credits are passed to the personal accounts.

Accounts Rendered Book (Debit Journal).—This book does not call for special comment. It corresponds with the sales journal of a trading concern. In the case of a builder engaged in jobbing work in addition to contracting, the items must be analysed out into two columns provided for the purpose. The usual debit postings are made, the double entry being completed by credits to contract (finished work) account and jobbing account.

Wages Book.—The form of this book will vary according to the magnitude of the concern for which it is to be used. It must, however, always show the amount of wages chargeable to each contract, etc. The total wages for each job are debited weekly to their proper cost accounts, and a debit is also passed for the grand totals to the adjustment accounts in the general ledger.

[1] For "pro forma" rulings and further details, see Walbank's *Builders' Accounts.*

Contract and Jobbing Ledger (Cost Book).—Unless the business is a large one, the contract and jobbing costs can be kept in one ledger. Of course the rulings are different, but there is no reason why they should not be bound into one book—in fact, this is frequently done. It will be advisable, therefore, to deal with these together.

In some cases where jobbing work is not taken, or only engaged in to a very small extent, it will not be necessary to keep the jobbing costs. Contract costs and jobbing costs are kept for different reasons. In the case of "contracts" the "costs" form the whole crux of the business. They show if, and where, and how a tender has been faulty, how mistakes have arisen in the tender, and why. They also guide the builder in tendering for further work. Jobbing costs are kept simply to show the principal what the various repairs, etc., have cost him and to assist him in making out his account for the work. Naturally he takes the cost of the work to him, and adds a percentage for profit.

There are two or three forms of cost ledgers in general use. The particular business in question should, however, be considered before deciding on one or the other.

The object to be aimed at in the cost ledger, is to have the amount expended on each contract analysed out, to show in a convenient and useful form the different trades and sections upon which the money has been spent. In this way it is seen where losses or excess profits have been made, and their bearing on the final result.

It may be mentioned here, that it is advisable in dealing with the "extras" incurred on many contracts, to open a separate heading, styled "Contract No. —— (Extras Account)." Unless this is done, difficulties will arise in making out the claim for "extras," which is, of course, payable in addition to the contract price. In fact, an "extras account" practically amounts to a large "jobbing cost account."

At the close of the year (or other period taken) the balances standing in the cost ledger on the contracts, etc., still in progress, will, after the passing of the closing entries, agree with the adjustment accounts in the general ledger, and thus prove the accuracy of the "costs."

Other Ledgers (General, Impersonal, Private, etc.)—These ledgers will be split up or combined, according to the size of the particular concern.

There is only one feature in the personal accounts to which attention need be drawn; that is the large number of "cash" creditors and debtors which will appear. This is accounted for by the trade custom of making payments on account of work done before such work is actually completed, and accordingly before the corresponding debit or credit has been passed. Where the payment has been made *to* the builder in accordance with the architect's certificate for work done on account of a contract, no difficulty arises in dealing with the matter. These "cash" creditors' balances are separately extracted at the end of the year, and deducted in the balance sheet from the work in progress. On no account must they be shown as "sundry creditors." Where, however, the payment has been made *by* the builder to a sub-contractor on account of work he has done, more care is necessary. In such a case it must be seen that either an invoice is passed through the purchase journal for the work done, or that an adequate provision is made for the unascertained amount outstanding at the end of the year.

Of the impersonal accounts, the "cost adjustment accounts" call for special comment. These adjustments are worked through two accounts, *i.e.*

the "contract (work in progress) account," and the "contract (finished work) account." To the former of these the various cost totals are posted during the year, and at the close of the period the account is adjusted by transfers to the "finished work account," etc. The balance on the "work in progress account" will then agree with the total of the outstanding cost ledger balances. The same remarks apply to the "jobbing adjustment accounts," where it is necessary to introduce them.

SECONDARY BOOKS.—In addition to the aforementioned books, it will in some cases be advisable to introduce other books in order to arrive at further details.

Register of Tenders.—This book is found in a more or less complete form in many builders' offices, from the rough notes in a notebook of the total amounts of the tenders and the names and amounts of the successful tenders, down to a detailed analysis of the different items. The book is intended to show the principal of a large concern, almost at a glance, what his various tenders have amounted to, and the details making such; which tenders he has lost, and (if possible) why he has lost them; and in the cases of successful tenders, how the actual compares with the estimated cost.

"Sub-Wages" Cash-Book.—In a concern of any magnitude it will be necessary to introduce sub-wages cash-books to relieve the petty cash-book from the "subbing" items. The advancing of money to workmen on account of their wages is a practice which seems to be more in vogue in the case of builders than in any other business. It is a custom which causes a considerable amount of extra clerical labour, especially in the preparation of the wages book, but apparently it is an evil which cannot be stopped under existing conditions.

An ordinary debit and credit cash-book will meet the case.

It is advisable to work these sub-wages cash-books on the "imprest system." Each man empowered to "sub" receives a round sum to commence with, and the amount advanced each week is returned to him out of the wages cheque. In this way he always commences a new week with the same amount of cash in hand.

Stores Books.—It is sometimes found beneficial to keep a detailed record of stores received and issued. In this way a discrepancy in this department, whether it arises from peculation or otherwise, is more easily located. As goods come in and go out they are charged to the accounts to which they belong in the stores ledger, through analysis books. At the end of the year the stock sheets, the balances in the stores ledger, and the balance on the stores account in the general ledger are compared, and any wide discrepancy is inquired into. Of course there will always be a slight difference between the figures.

Plant Books.—The object of these books is to show where the various items of plant are lying at any given time. An ordinary journal and ledger are required. The ledger is divided into two parts. The first section contains appropriate accounts, under which the various items of plant are classified thus: pug mill account, cranes account, scaffolding account, etc.

In the second section accounts are opened for each contract, etc. (indicated by its number) on which plant is being used. The transfers are made through the journal as the plant is moved about.

Establishment Charges.—Certain expenses are incurred by a builder which cannot be charged direct to any specific contract, and yet; as these outgoings are incurred for the benefit of the whole, each contract, etc., must

bear its proportion. There are various methods of arriving at this proportion, thus:—

(*a*) Total cost system;

(*b*) Time system (*i.e.* number of hours the workmen are engaged);

(*c*) Wages paid system.

The objection to the "total cost" is its unfairness to a contract involving large expenditure on costly materials, for it cannot be correct to make such a contract bear a larger proportion of the establishment charges than another involving the same expenditure of time, and similar in all respects, except in the matter of the value of the material employed. The method of calculating this item on the "total hours worked" is certainly more correct than the "total wages bill," for the *time occupied*, and not the *amount paid*, is the true principle to work on. For practical purposes, however, it is much simpler to base the calculation on the latter item, while it will usually be found that the ratio of "total wages" to "total hours" fluctuates very little.

Profit and Loss Accounts.—In addition to the general profit and loss account, it is advisable to amplify and trace back the profit shown on "contracts." To do this it is necessary to draw up a "contracts profit and loss account," which practically corresponds with the manufacturing account of a factory.

The "contracts" profit and loss account is divided into two parts, the first section showing the profit or loss on the completed contracts, the last portion dealing with the estimated profit or loss on unfinished work. It is essential in dealing with this class of accounts that these estimates should be made. Generally speaking, it is not advisable to take credit for profits on work in progress, but in the case of builders the result shown would be considerably distorted were these provisions not made. It is, therefore, not only permissible, but absolutely essential, that the builder should take credit for profits fairly shown on a correct measuring up. Were this not done, the profits or losses of one year would be unfairly swollen or reduced, to the detriment or advantage of another year. Each contract is dealt with separately, and the result of the year's work on it is shown clearly on the account. The work in progress at the commencement, the cost of the work during the year, the contract price (if the job is finished), and the adjustment of provisions are all stated, and the account, if properly drawn, proves its accuracy in two or three ways.

In some cases it will be necessary to go into the details of the jobbing profit, but the above remarks sufficiently apply where this is done.

As regards the general profit and loss account, there is only one point which calls for special comment. In some cases the builder will require the proportion of establishment charges to be debited to his cost as the work goes on, so that he may see exactly how each contract is going from time to time without waiting till the close of the year. To do this it is necessary to debit the establishment charges weekly, fixing a percentage on the wages beforehand. This percentage is arrived at from past experience and a knowledge of the general expenses of the concern. At the end of the year all these weekly debits come up in total as a credit on the general profit and loss account, and it can be seen, by comparison with the actual establishment charges, how far the percentage has been wrong, and (if necessary) an alteration is made accordingly for the following year.

Balance Sheet.—The balance sheet will show, deducted from the work

in progress, the total amount which has been drawn on account of work done. This item must be shown in this way as a reduction of the assets, and not included among the liabilities as "sundry creditors."

The depreciation on plant, etc., will generally be deducted each year from the asset. In some cases, however, it is found to be more advantageous to treat this matter by raising a provision account, and by revaluing the plant after a few years. Such a case arises where plant books are kept, and the balances in the plant ledger are agreed annually with the balance of the plant account in the general ledger. Were the depreciation deducted yearly in this instance, a large amount of detail work would be involved in dividing the total depreciation over the various heads in the plant ledger. The result is the same, of course, in each case, as the present value of the plant is shown in either instance at the same figure as an asset on the balance sheet. The raising of the provision account, however, simplifies the working.

The balance sheet will also probably include among the assets a comparatively large item as "cash in hands of various foremen." This is the amount which these men hold to "sub" their workmen with, and for which they are accountable to the business. The "subbing" question has already been dealt with. JOHN A. WALBANK.

Building Societies are societies formed for the purpose of raising by the subscriptions of its members a fund out of which to make advances to its members upon the security of freehold, copyhold, or leasehold estate by way of mortgage, and very few of such societies actually build houses, or even grant building loans, as the name would naturally suggest. The Building Societies Act of 1874, and amending statutes, the last of which is the 1894 Act, regulate the law on the subject. Each society now registered must have as the concluding portion of its name the words "Building Society," in the same way as joint stock companies must have the word "Limited."

There are two kinds of societies, namely, terminating and permanent societies. A terminating society is one which by its rules has to terminate on a fixed date, or when a specified result has been attained. A permanent society is one which has not by its rules any fixed date or result on which it must terminate. The amount of the shares in both cases is raised by periodical subscriptions, which are usually payable fortnightly or monthly. The details of the working of a permanent society will be best explained by taking an example. Thus, a society in which the shares are of the nominal value of £25, the subscription payable by each member would be 1s. per share per fortnight. If it is assumed that the profit made by the society is at the rate of 5 per cent per annum, then in slightly more than 13½ years this fortnightly payment of 1s. will amount with profit to £25. The member will have paid £17, 14s. in subscriptions, and the balance of £7, 6s. is profit or interest which has been earned. Thus, suppose a member wishes to purchase a house worth £200, he would have to take out eight shares of £25 each. Upon these shares he would pay 8s. per fortnight, or £10, 8s. per annum. He would get the £200, and would have to pay interest upon it at the rate of 8s. per fortnight, with the exception of one fortnight each year, which is equal to £10 per annum. At the end of the 13½ years, or even sooner, in consequence of larger profits, the house would belong absolutely to the member. There are thus two kinds of members in such societies, namely, investing members whose object is merely to invest their funds, although they may eventually hope to purchase property, and borrowing members,

those having money advanced to them. Both contribute to the success of the society, and both share in its profits. There is practically no liability attaching to members, except for arrears of subscriptions due on their shares. The liability of borrowing members extends to the total subscriptions payable by them, as they have received advances from the society. Building societies are allowed under the Act to receive sums on deposit, or as loans, at interest, to an amount not exceeding two-thirds of the amount due by borrowing members under mortgage. Societies which can borrow at a low rate of interest are thus enabled to make a considerable profit, which enables the sections to terminate sooner than they would otherwise do. At the termination of a section investing members receive their £25, and borrowing members the title deeds of their estate.

TABLE—*Showing the Amount Members may receive per Share when withdrawing, and pay per Share when redeeming at any time from one to thirteen and a half Years, at Half-yearly Intervals, and the Profits at each Period on the basis of* 5 *per cent.*

Withdrawing or redeeming at the end of the

Half-Year.	Paid in.			Withdrawal.			Redemption.			Total Profit.			Profit per Half-Year.		
	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
1st	0	13	0	0	13	1	24	6	11	0	0	1	0	0	1
2nd	1	6	0	1	6	6	23	13	6	0	0	6	0	0	5
3rd	1	19	0	2	0	3	22	19	9	0	1	3	0	0	9
4th	2	12	0	2	14	4	22	5	8	0	2	4	0	1	1
5th	3	5	0	3	8	9	21	11	3	0	3	9	0	1	5
6th	3	18	0	4	3	6	20	16	6	0	5	6	0	1	9
7th	4	11	0	4	18	9	20	1	3	0	7	9	0	2	3
8th	5	4	0	5	14	4	19	5	8	0	10	4	0	2	7
9th	5	17	0	6	10	3	18	9	9	0	13	3	0	2	11
10th	6	10	0	7	6	8	17	13	4	0	16	8	0	3	5
11th	7	3	0	8	3	5	16	16	7	1	0	5	0	3	9
12th	7	16	0	9	0	7	15	19	5	1	4	7	0	4	2
13th	8	9	0	9	18	3	15	1	9	1	9	3	0	4	8
14th	9	2	0	10	16	4	14	3	8	1	14	4	0	5	1
15th	9	15	0	11	14	10	13	5	2	1	19	10	0	5	6
16th	10	8	0	12	13	10	12	6	2	2	5	10	0	6	0
17th	11	1	0	13	13	3	11	6	9	2	12	3	0	6	5
18th	11	14	0	14	13	3	10	6	9	2	19	3	0	7	0
19th	12	7	0	15	13	8	9	6	4	3	6	8	0	7	5
20th	13	0	0	16	14	8	8	5	4	3	14	8	0	8	0
21st	13	13	0	17	16	2	7	3	10	4	3	2	0	8	6
22nd	14	6	0	18	18	2	6	1	10	4	12	2	0	9	0
23rd	14	19	0	20	0	10	4	19	2	5	1	10	0	9	8
24th	15	12	0	21	4	0	3	16	0	5	12	0	0	10	2
25th	16	5	0	22	7	9	2	12	3	6	2	9	0	10	9
26th	16	18	0	23	12	1	1	7	11	6	14	1	0	11	4
27th	17	11	0	24	17	0	0	3	0	7	6	0	0	11	11
													7	6	0

A special feature with a number of societies is the opening of a new section each year, that is, a fixed date is taken from which members can start to pay their subscriptions, and from which the financial year of the society is reckoned. This enables a special effort to be made at the beginning of each year to secure new members.

The preceding table shows the amount investing members may receive per £25 share when withdrawing, and the amount borrowing members

have to pay when redeeming their loans at half-yearly periods, on the assumption that the profits of the society are at the rate of 5 per cent per annum. Members are of course entitled to withdraw on terms stipulated in the Society's Rules, receiving repayment of subscriptions deposited, with such share of allocated profit as effeirs to the shares held by them. Borrowers are likewise at liberty to redeem their mortgages on the terms of the bond and the Rules, the sum payable on redemption being the amount due under the bond *minus* the subscriptions and profit effeiring to the shares held by them.

Building societies have, as a rule, been remarkably successful when their scope has been confined solely to enabling the industrial and thrifty classes to acquire possession of their own homes.

The management of such societies is generally entrusted to a practising law-agent or accountant, and a committee of management elected from among the members.

Building Societies' Accounts.—Previous to the Building Societies Act 1894 coming into force, the accounts of building societies were regulated by section 40 of the Building Societies Act 1874, which provided as follows:—

"The secretary or other officer of every society under this Act shall, once in every year at least, prepare an account of all the receipts and expenditure of the society since the preceding statement, and a general statement of its funds and effects, liabilities and assets, showing the amounts due to the holders of the various classes of shares respectively, to depositors and creditors for loans, and also the balance due or outstanding on their mortgage securities (not including prospective interest) and the amount invested in the funds or other securities; and every such account and statement shall be attested by the auditors, to whom the mortgage deeds and other securities belonging to the society shall be produced, and such account and statement shall be countersigned by the secretary or other officer; and every member, depositor, and creditor for loans shall be entitled to receive from the society a copy of such account and statement, and a copy thereof shall be sent to the Registrar within fourteen days after the annual or other general meeting at which it is presented, and another copy thereof shall be suspended in a conspicuous place in every office of the society under this Act."

No special form of accounts was prescribed, but in most cases a statement of receipts and payments, together with a balance sheet, were issued to the members.

The following is the statement of accounts issued by a permanent building society in 1892:—

BALANCE SHEET as at 15th February 1892.

Liabilities.

DUE TO SHAREHOLDERS IN RESPECT OF SUBSCRIPTIONS UPON SHARES:—						
III. Section	108 Shares, at	£16 18 0			£1,825 4 0	
IV. ,,	297½ ,,	14 6 0			4,254 5 0	
V. ,,	127½ ,,	11 14 0			1,491 15 0	
VI. ,,	119 ,,	9 2 0			1,082 18 0	
VII. ,,	197½ ,,	6 10 0			1,283 15 0	
VIII. ,,	213 ,,	5 4 0			1,107 12 0	
IX. ,,	186½ ,,	3 18 0			727 7 0	
X. ,,	322½ ,,	2 12 0			838 10 0	
XI. ,,	456½ ,,	1 6 0			593 9 0	
	2028				£13,204 15 0	
DUE TO SHAREHOLDERS IN RESPECT OF PROFIT UPON SHARES:—						
III. Section	108 Shares, at	£5 17 2		£632 14 0		
IV. ,,	297½ ,,	3 18 2		1,162 14 7		
V. ,,	127½ ,,	2 8 2		307 1 3		
VI. ,,	119 ,,	1 6 3		156 3 9		
VII. ,,	197½ ,,	0 11 6		113 11 3		
VIII. ,,	213 ,,	0 6 8		71 0 0		
IX. ,,	186½ ,,	0 3 4		31 1 8		
X. ,,	322½ ,,	0 1 7		25 10 7		
XI. ,,	456½ ,,	0 0 6		11 8 3		
	2028			£2,511 5 4		
	Profit not Allocated			1 13 5		
					2,512 18 9	
Payments in Advance by Shareholders					53 1 9	
Due to Depositors (including £109 : 7 : 4 of Interest to date)					10,679 7 4	
					£26,450 2 10	

Assets.

DUE BY SHAREHOLDERS IN RESPECT OF ADVANCES:—						
III. Section	54 Shares, at	£25 0 0			£1,350 0 0	
IV. ,,	133½ ,,	25 0 0			3,343 15 0	
V. ,,	62 ,,	25 0 0			1,550 0 0	
VI. ,,	43 ,,	25 0 0			1,075 0 0	
VII. ,,	65¼ ,,	25 0 0			1,631 5 0	
VIII. ,,	94½ ,,	25 0 0			2,368 15 0	
IX. ,,	57⅞ ,,	25 0 0			1,441 10 0	
X. ,,	235½ ,,	25 0 0			5,893 15 0	
XI. ,,	127½ ,,	25 0 0			3,187 10 0	
	873⅛				£21,841 10 0	
ARREARS DUE BY SHAREHOLDERS:—						
III. Section			£0 13 6			
IV. ,,			5 15 0			
V. ,,			178 3 4			
VI. ,,			40 0 1			
VII. ,,			29 6 2			
VIII. ,,			57 19 9			
IX. ,,			112 13 11			
X. ,,			45 4 11			
XI. ,,			77 6 1			
					547 2 9	
Consisting of:—						
Arrears Due by Advanced Members			£353 4 1			
Arrears Due by Unadvanced Members			193 18 8			
Value of Properties Factored by the Company					3,092 0 0	
Sum to be Realised from Property Sold by the Company					383 14 4	
CASH BALANCES:—						
Due by Commercial Bank			£590 10 6			
Due to Treasurer			4 14 9			
					585 15 9	
					£26,450 2 10	

Abstract of the Cash Transactions of the Company for the Year ending 15th February 1892.

To Balance at 16th February 1891 :—				By Advances	£4,375 0 0
Due by Treasurer		£1 15 9		,, Insurance	47 13 0
Due by Bank		519 1 6		,, Survey Fees	11 16 0
		£520 17 3		,, Interest	500 14 1
,, Proceeds of Heritable Property Sold		947 16 10		,, Subscriptions Paid on Shares withdrawn :—	
,, Entry Money, Laws, Pass-Books, and Transfer Fees		16 3 6		Second Section £4450 18 0	
,, Subscriptions		2,711 8 9		Other Sections 1969 7 6	
,, Interest		1,412 11 9			6,420 5 6
,, Interest on Arrears		32 18 0		,, Profit Paid on Shares Withdrawn :—	
,, Insurance		39 7 0		Second Section £1694 5 0	
,, Survey Fees		9 15 0		Other Sections 272 13 2	
,, Redemptions :—					1,966 18 2
Second Section £2931 5 0				,, Office Rent, Printing, and Stationery	134 9 7
Other Sections 1587 10 0				,,	986 0 0
		4,518 15 0		,, Incidents	5 1 0
,, Deposits Received		4,824 0 0		,, Balances at 15th February 1892 :—	
				Due by Bank £590 10 6	
				Due to Treasurer 4 14 9	
					585 15 9
		£15,033 13 1			£15,033 13 1

Edinburgh, 12*th April* 1892.—We, the undersigned, Auditors of the . Building Society, have examined the Books of the Society with the above Abstract, and find the same correct and properly vouched, with a balance due by the Commercial Bank of Scotland (Limited) of Five Hundred and Ninety Pounds Ten Shillings and Sixpence (£590 :10 : 6), and a balance due to the Treasurer of Four Pounds Fourteen Shillings and Ninepence (£4 :14 : 9).

JOHN ROSS, *Auditor for Directors.*
ARTHUR MORE, *Auditor for Shareholders.*

As will be observed from the above statement of accounts and auditors' docquet, no Profit and Loss Account is given, and the reason for this appears to be that by the section of the 1874 Act quoted above it was not necessary to have such an account.

It will also be observed that the accounts were audited by an auditor appointed by the directors and also by an auditor appointed by the shareholders.

The accounts of building societies continued to be ruled by the above section till the 1894 Act was passed, the leading provisions of which relating to the accounts are as follows:—

Sec. 2. (1) Every annual account and statement under section 40 of the Building Societies Act, 1874, shall be made up to the end of the official year of the society to which it relates, and shall be in such form and shall contain such particulars as the Chief Registrar of Friendly Societies may from time to time, with the approval of a Secretary of State, direct, either generally or with respect to any society or class of societies. The form of annual account and statement prescribed for general use by the Chief Registrar under this section, and every alteration of that form, shall as soon as practicable be laid before each House of Parliament, and shall not come into operation until the expiration of forty days from the date at which it is so laid. Provided that every such account and statement shall set forth—

(*a*) With respect to mortgages to the society upon each of which the present debt does not exceed five thousand pounds (not being mortgages where the repayments are upwards of twelve months in arrear, or where the property has for upwards of twelve months been in possession of the society), the number of all such mortgages, and the aggregate amount owing thereon at the date of the account or statement, such information being given separately in respect of each of the four following classes:—

(i.) Where the debt does not exceed five hundred pounds.

(ii.) Where the debt exceeds five hundred pounds and does not exceed one thousand pounds.

(iii.) Where the debt exceeds one thousand pounds and does not eceexd three thousand pounds.

(iv.) Where the debt exceeds three thousand pounds and does not exceed five thousand pounds; and

(*b*) With respect to any other mortgage to the society, the particulars shown by the appropriate tabular form in the First Schedule to this Act.

(2) Every auditor, in attesting any such annual account or statement, shall either certify that it is correct, duly vouched, and in accordance with law, or specially report to the society in what respects he finds it incorrect, unvouched, or not in accordance with law, and shall also certify that he has at that audit actually inspected the mortgage deeds and other securities belonging to the society, and shall state the number of properties with respect to which deeds shall have been produced to and actually inspected by him.

(3) A copy of every such annual account and statement shall be sent to the registrar within fourteen days after the annual or other general meeting at which it is presented, or within three months after the expiration of the official year of the society, whichever period expires first.

(4) For the purposes of this section the expression "official year"

shall mean, in the case of any society established after the passing of this Act, the year ending with the 31st day of December; and, in the case of any society established before the passing of this Act, the year ending with the time up to which its annual account and statement is made at the passing of this Act.

(5) This section shall not come into operation until the expiration of twelve months after the passing of this Act.

3. Notwithstanding anything in the rules of any society under the Building Societies Acts, one at least of the auditors of the society shall be a person who publicly carries on the business of an accountant.

In accordance with section 2 given above, a form of accounts was prescribed by the Chief Registrar of Friendly Societies, and all building societies incorporated under the Building Societies Acts must issue their accounts in this form.

In order that the principle on which the form is based may be fully understood, the following may be taken as an example. The example given is that of a permanent building society receiving money from members and advancing money on heritable property, the members receiving the loans repaying the advance by fortnightly payments of principal, and paying interest at 5 per cent per annum by fortnightly instalments. No purpose would be served by giving the bare form as issued by the Registrar, but the following will be of use in assisting those interested to understand that form:—

I. Receipts and Payments Account.

Dr. *Cr.*

To Balances at beginning of year:—				By Cash paid during year, viz.:—		
In Commercial Bank of Scotland, Ltd.	£404	8	7	Advances	£3960	0 0
Due to Treasurer	16	1	1	Insurance	37	15 6
	£388	7	6	Survey Fees	11	10 10
To Cash received during year, viz.:—				Interest on Deposits	278	14 3
Entry Money, Laws, and Pass Books	17	15	10	Interest on Bank Overdraft	0	18 0
Subscriptions	3918	18	8	Subscriptions paid on Shares withdrawn	2284	9 9
Interest on Advances	1264	6	0	Profit paid on Shares withdrawn	591	13 9
Interest on Arrears	6	0	1	Management, including Office Rent, Printing, and Stationery	185	3 1
Insurance and Survey Fees	52	17	0	Income Tax, Sch. D and E	84	10 2
Redemptions	2704	8	8	Deposits repaid	1782	0 11
Deposits received	1617	0	8		£9166	16 3
Interest on Deposit Receipts	7	7	10	By Balances at close of year:—		
				In Commercial Bank of Scotland, Ltd.	£537 5 10	
				On Deposit Receipt	300 0 0	
					£837 5 10	
				Due to Treasurer	26 19 10	
					810	6 0
	£9977	2	3		£9977	2 3

II. Revenue (including Accretions to Capital) and Expenditure Account.

Balances at beginning of year, as shown by Last Annual Statement.		Additions during the Year.		Diminutions during the Year.		Balances at close of year, as shown by Liabilities and Assets Account.	
		Particulars.	Amount.	Particulars.	Amount.		
Due to Shareholders . .	£16,018 12 0	Subscriptions of Shareholders	£8918 18 8	Withdrawals of Shareholders	£2284 9 9	Due to Shareholders . .	£17,719 13 0
Arrears £236 3 4						Arrears £325 11 7	
Over payments 74 12 8						Over payments 97 8 5	
	161 11 1						228 3 2
	£15,857 0 11						£17,491 9 10
Profit . . .	2,949 8 11	Interest added	948 16 2	Interest paid .	591 18 9	Profit . . .	3,306 11 4
	£18,806 9 10						£20,798 1 2
Due to Depositors	8,092 0 7	New Deposits	1617 0 8	Deposits withdrawn . .	1782 0 11	Due to Depositors	7,927 0 4
Interest to date .	65 5 7	Interest added	274 7 11	Interest paid .	278 14 8	Interest to date .	60 19 3
		Sources of Profit, viz.—		Expenditure, viz.—			
		Interest receivable .	1315 12 11	Interest on Deposits .	274 7 11		
		Interest on Investments	7 7 10	Interest on Bank Overdraft .	0 18 0		
Undivided Profit, not including Prospective Interest	305 2 7	Insurance .	5 3 6	Management Expenses .	188 18 1	Undivided Profit, not including Prospective Interest	216 17 5
		Interest on Arrears .	8 0 1	Income Tax .	84 10 2		
		Entry Money, Laws & Pass Books sold	18 0 10	Profit allocated during year . .	948 16 2		
Due to Survey Committee .	11 10 10	Due to Survey Committee .	8 13 6	Paid Survey Committee .	11 10 10	Due to Survey Committee .	8 13 6
Sundry Accounts outstanding .	1 5 0			Paid Sundry Accounts outstanding .	1 5 0		
		Due to Treasurer . .	26 19 10	Paid Treasurer . .	16 1 1	Due to Treasurer .	26 19 10
	£27,297 15 6		£8149 1 11		£6408 5 11		£29,088 11 6
	Total, £35,446 17 5				Total, £35,446 17 5		

Due on Mortgage Securities . .	£25,735 1 2	Advanced on Mortgage .	£3850 0 0	Repayment of Advances .	£2598 18 8	Due on Mortgage Securities, not including Prospective Interest	£26,991 2 6
Interest due from Borrowers . .	138 11 0	Interest due from Borrowers . .	1315 12 11	Interest received from Borrowers .	1264 6 0	Interest due from Borrowers . .	189 17 11
Other Assets— Surveys, Insurance, Interest on Arrears, etc. . .	15 4 9	Surveys, Insurance, Interest on Arrears, etc.	77 13 5	Surveys, Insurance, Interest on Arrears, etc., received	76 12 11	Other Assets— Surveys, Insurance, Interest on Arrears, etc. .	16 5 3
Advances on Subscriptions—		Advances on Subscriptions—		Advances on Subscriptions—		Advances on Subscriptions—	
To Mortgagors .	161 0 0	To Mortgrs.	0 0 0	To Mortgrs.	25 0 0	To Mortgagors .	136 0 0
To Investors .	848 10 0	To Investors	110 0 0	To Investors	85 10 0	To Investors .	868 0 0
In Commercial Bank . .	404 8 7	Commercial Bank . .	537 5 10	Commercial Bank . .	404 8 7	In Commercial Bank . . .	537 5 10
		On Deposit Receipt .	300 0 0			On Deposit Receipt . . .	300 0 0
	£27,297 15 6		£6190 12 2		£4449 16 2		£29,033 11 6
	Total, £33,488 7 8				Total, £33,488 7 8		

III. Liabilities and Assets Account

To Liabilities to Holders of Shares, viz. :—

Sec.	No. of Shares.	Subscription per Share.	Profit per Share.	Principal.	Interest.
IX.	54½	£16 18 0	£6 11 11	£921 1 0	£359 9 6
X.	44	15 12 0	5 11 3	686 8 0	244 15 0
XI.	35	14 6 0	4 12 2	500 10 0	161 5 10
XII.	186	13 0 0	3 14 8	2,418 0 0	694 8 0
XIII.	155	11 14 0	2 19 3	1,813 10 0	459 3 9
XIV.	159	10 8 0	2 5 10	1,653 12 0	364 7 6
XV.	121	9 2 0	1 14 4	1,101 2 0	207 14 4
XVI.	123	7 16 0	1 4 7	959 8 0	151 3 9
XVII.	327	6 10 0	0 16 8	2,125 10 0	272 10 0
XVIII.	388	5 4 0	0 10 4	2,017 12 0	200 9 4
XIX.	496	3 18 0	0 5 6	1,934 8 0	136 8 0
XX.	364	2 12 0	0 2 4	946 8 0	42 9 4
XXI.	494	1 6 0	0 0 6	642 4 0	12 7 0
	2946½			£17,719 13 0	£3,306 11 4
Arrears			£325 11 7		
Over payments			97 8 5		
				228 3 2	
					17,491 9 10
					£20,798 1 2
Unallocated Profit					216 17 5
Due to Survey Committee					8 13 6
Due to Treasurer					26 19 10

To Liabilities to Depositors—

For Deposits payable upon various times of notice :—		
Principal	£7927 0 4	
Interest	60 19 3	
		7,987 19 7
		£29,038 11 6

By Balance due or outstanding on Mortgage Securities, not including Prospective Interest, viz.—

Mortgages from Members where the repayments are not upwards of 12 months in arrears, and the property has not been upwards of 12 months in possession of the Society—		
On 61 Mortgages where the debt does not exceed £500		£14,611 5 0
On 6 Mortgages where the debt exceeds £500 and does not exceed £1000		3,846 12 10
On 4 Mortgages where the debt exceeds £1000 and does not exceed £3000		8,533 4 8
Total number of Properties mortgaged to the Society available under Section 14 of the Act of 1894	71	£26,991 2 6
Interest accrued on advances		189 17 11

By other Assets—

Surveys, Insurance, Interest on Arrears, etc.		16 5 3
Amount invested in other Securities, viz. :—		
Advances to Members (Mortgagors), being repayment of subscriptions at 5 per cent	£136 0 0	
Advances to Members (Investors), being to account of subscriptions at 5 per cent	868 0 0	
		1,004 0 0
Cash at Bankers :—		
Commercial Bank	£537 5 10	
On Deposit Receipt	300 0 0	
		837 5 10
		£29,038 11 6

Certificate of Auditor

I, the undersigned, John Mackie, being a person who publicly carries on the business of an Accountant at No. Street, Edinburgh, the duly appointed Auditor of the above-mentioned Society, do hereby attest the foregoing Accounts and Statements, and certify that they are correct, duly vouched, and in accordance with law ; and I also certify that I have at this Audit actually inspected the Mortgage Deeds and other securities belonging to the Society, in respect of each of the seventy-one Properties in mortgage to the Society referred to in the foregoing Accounts and Statements.

JOHN MACKIE.

An explanation as to the preparation of these statements is now given.

I. *Receipts and Payments Account.*

The particulars for the preparation of this account are obtained from the cash book which, if in columnar form, will readily supply the information needed.

II. *Revenue (including Accretions to Capital) and Expenditure Account.*

First Division of Account.—The first column of the first division consists of the credit balances standing in the books of the society at the beginning of the financial year, and which appeared as liabilities in the previous balance sheet.

In the column headed "Additions during the year," all additional liabilities, *i.e.* additions to the previous credit balances or new credit balances are entered. For example, take the first item, "Subscriptions of Shareholders, £3918 : 18 : 8." This consists of the cash received from shareholders during the year, and which would be posted from the cash book to the credit of the "Shareholders' Subscriptions Account" in the general ledger.

Subscriptions returned to shareholders appear in the next column, "Diminutions during the year," and would appear on the credit side of the cash book and at the debit of the "Shareholders' Subscriptions Account" in the general ledger.

The balance due to shareholders, £17,491 : 9 : 10, appears in the fourth column, and is the balance shown in the "Shareholders' Subscriptions Account" in the general ledger.

The figure £17,719 : 13 : 0 is the balance which would have been due to shareholders if the subscriptions had been fully paid, and is ascertained as shown in Statement III. The arrears and over-payments by members are obtained from the Shareholders' Ledger by abstracting the ledger balances.

The other items in the first division are treated in a similar way. The items under the heading "Sources of Profit" in the second column consist of the accrued revenue for the year, whether it has been received in cash or not, while the item "Expenditure" consists of the expenditure chargeable for the year whether paid or outstanding at the close of the year.

As the particulars entered in the first two columns are the items appearing on the credit side of the Ledger Accounts, and the particulars entered in the last two columns consist of the debit items in the Ledger Accounts including the balances at the end, it follows that the total of columns one and two must equal the total of columns three and four.

Second Division of Account.—The first column consists of the debit balances brought forward from last year. The second column consists of additions to these balances during the year, *e.g.* "Interest due from Borrowers, £1315 : 12 : 11." This consists of the interest due for the year, whether it has been received or not.

Any cash received to account of the items in the first and second columns is entered in the third column.

The fourth column represents the debit balances or assets at the end of the year.

Columns one and two represent the items on the debit side of the various Ledger Accounts in the general ledger, while columns three and four represent what appears on the credit side of these various Ledger Accounts, the debit balances at the end, of course, appearing on the credit side of the Ledger Account before it is squared off. It therefore follows that the total of columns one and two equals columns three and four.

To a person conversant with accounts, this statement, which is required o be submitted to the members, may be quite intelligible, but to an ordinary ayman it may present a different appearance, and it is well to supplement t by a simple Profit and Loss Account, as follows:—

PROFIT AND LOSS ACCOUNT for year to 3rd February.

Expenditure				*Income*			
Feb. 3. To Interest on Deposits		£274	7 11	Feb. 3. By Interest receivable from Borrowers	£1315	12 11
,, Interest on Bank Overdraft		0	18 0	,, Interest on Investments	7	7 10
,, Management Expenses:—				,, Insurance	5	3 6
Salaries and Fees £145 9 1				,, Interest on Arrears	8	0 1
Rent, Printing, Stationery, etc. 38 9 0				,, Entry Money, Laws, and Pass Books sold, and Transfer Fees	18	0 10
	183	18	1			
,, Income Tax	34	10	2			
,, Balance, being profit for year	860	11	0			
	£1354	5	2		£1354	5 2
Feb. 3. To Profit allocated among Shareholders for year	£948	16	2	Feb. 4. By Balance of unallocated profit from last year	£305	2 7
,, Balance, being unallocated profit	216	17	5	Feb. 3. ,, Profit earned for year as above	860	11 0
	£1165	13	7		£1165	13 7

If reference be made to the Statement II., Revenue (including Accretions to Capital) and Expenditure, it will be observed that the figures in the above Profit and Loss Account are contained in the first division in columns two and three of that statement.

III. *Liabilities and Assets Account.*

Liabilities.—The figures given in column four of the first division of Statement II. are in this Liabilities and Assets Account set forth in greater detail. It will be observed the total of £29,038:11:6 is the same as in Statement II.

Assets.—The particulars as to mortgages given in this statement require to be set out in this manner in accordance with section 2 of the Building Societies Act 1894.

The total £29,038:11:6 agrees with the total in the fourth column of Statement II.

Certificate of Auditor.

Section 2 of the Building Societies Act 1894 prescribes what an auditor must certify, and by section 3 of the same Act, such auditor, or one at least of the auditors, must be a person who publicly carries on the business of an accountant.

The following schedule to the Act comes before the auditor's certificate in the statement sent to the registrar, and is required to be filled up where necessary (sec. 2):—

Part I.

Particulars to be set forth in the case of a mortgage where the repayments are not upwards of twelve months in arrears, and the property has not been upwards of twelve months in possession of the society, and where the present debt exceeds £5000.

1	2	3	4	5	6	7	8	9
Date of Advance.	Whether subject to any prior Mortgage or Charge. If so, what amount.	Whether Freehold, Copyhold, or Leasehold.	Original Valuation of Property.	Amount of Advance.	Present Debt.	Amount of Payments in Advance.	Amount of Payments in Arrear.	Observa
			£	£	£	£	£	
		Total . .						

Part II.

Particulars to be set forth in the case of property of which the socie has been upwards of twelve months in possession.

1	2	3	4	5	6	7	8	9	10	11	12
Roll Numbers.	Date of Advance.	Date when Possession was taken.	Whether subject to any prior Mortgage or Charge. If so, what amount.	Whether Freehold, Copyhold, or Leasehold.	Amount of Advance.	Original Valuation of Property.	Debt when Possession was taken.	Present Amount included in Assets.	Gross Income for the Year.	Outgoings for the Year.	Observations.
					£	£	£	£	£	£	
				Total .							

Part III.

Particulars to be set forth in the case of a mortgage where the repayments are upwards of twelve months in arrear, and the property has not been upwards of twelve months in possession of the society.

1	2	3	4	5	6	7	8	9
Date of Advance.	Whether subject to any prior Mortgage or Charge. If so, what amount.	Whether Freehold, Copyhold, or Leasehold.	Number of Months in arrear.	Original Valuation of Property.	Amount of Advance.	Present Debt.	Amount of Payments in Arrear.	Observations.
				£	£	£	£	
			Total .					

Bull.—A term applied in the Stock Exchange to some one who buys shares with the view of selling them out when the shares rise. The term is usually applied to a speculator who buys with borrowed money for a rise in contradistinction to any one who buys as an investor. The investor buys stock and pays for it at the date of settlement. A bull, however, pays a rate of interest, in order to continue his bargain to the next settlement. The corresponding term for one selling securities for a speculative rise is a "bear."

Bullion.—The precious metals called gold and silver are usually spoken of as bullion when at or near the standard fineness accepted at the mints of the different countries of the world.

Buying In.—A term used in the Stock Exchange when a seller of stock has failed to deliver the stock. When a member of the Stock Exchange sells stocks or shares which he is unable to deliver at the stipulated date, the buyer who claims the stock employs the official broker of the Stock Exchange to buy in against the member failing to deliver, and should the buyer have to pay more than the price stipulated for, he claims against the original seller for the difference between the two prices.

END OF VOL. I.

Printed by R. & R. Clark, Limited, *Edinburgh.*